UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/42
14 February 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 11 of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Effective functioning of the various mechanisms established for supervision, investigation and monitoring of the implementation of the treaty obligations entered into by States in regard to human rights and of the existing international standards in this regard

Report of the Secretary-General

TABLE OF CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. TREATY MECHANISMS	3 - 49	3
A. Reporting procedures under the various human rights instruments	3 - 27	3
B. Inquiry procedures	28 - 32	7
C. Inter-State complaints	33 - 34	8
D. Communications procedures under treaty mechanisms	35 - 49	8

GE.94-10858 (E)

TABLE OF CONTENTS (continued)

		Paragraphs	Page
II.	NON-TREATY MECHANISMS	50 - 91	13
	A. The original mandates assigned to the various non-treaty mechanisms	50 - 63	13
	B. The international legal norms and standards on which existing non-treaty mechanisms now base their activities	64 - 65	17
	C. The conceptual framework, methods of work and procedural rules applied by each non-treaty mechanism in the discharge of its mandate	66 - 77	19
	D. The various norms, criteria and practices established by each existing mechanism in regard to the admissibility of communications	78 - 79	23
	E. The preliminary consideration and evaluation of communications, their referral to the interested parties and subsequent course of action	80 - 81	25
	F. Criteria used in practice by the Centre for Human Rights for channelling communications into a public machinery or into the 1503 procedure - legal foundation for such criteria	82 - 84	25
	G. Procedure for dealing with communications concerning the status of women	85 - 91	26

Introduction

1. By its resolution 1993/58, adopted on 9 March 1993, the Commission on Human Rights requested the Secretary-General to submit to its fiftieth session a report on the various treaty based and non-treaty based mechanisms which have been established "for the supervision, investigation and monitoring of the implementation of the provisions of international legal instruments and standards" in the field of human rights. In particular, the Commission wished to be informed of the following:

(a) Original mandates assigned to the various treaty and non-treaty mechanisms;

(b) International legal norms and standards on which existing non-treaty mechanisms now base their activities;

(c) Conceptual framework, methods of work and procedural rules applied by each non-treaty mechanism in the discharge of its mandate;

(d) Various norms, criteria and practices established by each existing mechanism in regard to the admissibility of communications;

(e) Preliminary consideration and evaluation of communications, their referral to the interested parties and subsequent course of action;

(f) Criteria used in practice by the Centre for Human Rights for channelling communications either to an existing public machinery or into the confidential procedure governed by Economic and Social Council resolution 1503 (XLVIII), together with the legal foundation for such criteria.

2. The above issues will be briefly dealt with in the following paragraphs, with appropriate references to the primary source. Part A refers to treaty mechanisms, part B to non-treaty mechanisms.

I. TREATY MECHANISMS

A. Reporting procedures under the various human rights instruments

3. At the present time, there are seven treaty bodies which have a mandate under the respective international instruments to consider reports submitted by States parties, as follows: (i) the Committee on Economic, Social and Cultural Rights, (ii) the Human Rights Committee, (iii) the Committee on the Elimination of Racial Discrimination, (iv) the Committee on the Elimination of Discrimination against Women, (v) the Committee against Torture, (vi) the Committee on the Rights of the Child and (vii) the Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid.

1. Committee on Economic, Social and Cultural Rights

4. In accordance with article 16 of the International Covenant on Economic, Social and Cultural Rights, the States parties to the Covenant undertake to submit reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized in the Covenant. All reports are submitted to the Secretary-General of the United Nations who transmits copies to the Economic and Social Council for its consideration.

5. In accordance with article 17 of the Covenant, the Council, in 1976, shortly after the Covenant entered into force, instituted, by its resolution 1988 (LX) a three phase reporting cycle according to which States parties were required to report, initially at two-yearly intervals, on different clusters of rights (arts. 6-9, 10-12 and 13-15). Subsequently, States parties were required to report on different clusters of rights every three years.

6. In accordance with article 18 of the Covenant, the Council also made arrangements with the specialized agencies in respect of their reporting on progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities.

7. By its resolution 1978/10, the Economic and Social Council established a 15-member sessional working group to assist it in considering the reports submitted by States parties. The working group was composed of representatives of States members of the Council which were also States parties to the Covenant.

8. By its resolution 1985/17, the working group was transformed by the Economic and Social Council into the Committee on Economic, Social and Cultural Rights, consisting of 18 experts who serve in their personal capacity.

9. The reporting system currently in force - proposed by the Committee on Economic, Social and Cultural Rights and endorsed by the Economic and Social Council in its resolution 1988/4 - provides for the submission of initial reports on the implementation of articles 1 to 15 of the Covenant within two years of ratification or accession to the Covenant, and thereafter for reports at five-year intervals.

10. The Committee makes general recommendations to the Economic and Social Council based on its study of State reports and reports received from United Nations specialized agencies, in accordance with Economic and Social Council resolution 1987/5 and General Assembly resolution 42/102.

2. Human Rights Committee

11. In accordance with article 40, paragraph 1, of the International Covenant on Civil and Political Rights, States parties undertake to submit reports to the Committee on the measures they have adopted to give effect to the rights

recognized in the Covenant and on the progress made in the enjoyment of those rights. The first report is due within one year of the entry into force of the Covenant for the State party concerned; thereafter, whenever the Committee so requests. In accordance with the decision on periodicity adopted by the Committee on 22 July 1981, subsequent reports of States parties are due every five years.

12. In accordance with article 40, paragraph 4, of the Covenant, the Committee began, in 1981, the practice of preparing general comments on substantive articles of the Covenant and, since 1992, concluding observations on State party reports.

13. In light of events indicating that human rights protected under the International Covenant on Civil and Political Rights had been seriously affected in certain States parties, the Human Rights Committee in 1991 adopted the practice of requesting States parties concerned urgently to submit reports on the human rights situation, generally within three months.

3. Committee on the Elimination of Racial Discrimination

14. Under article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties undertake to submit to the Committee a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests.

15. In 1988, the Committee endorsed a proposal made at the eleventh meeting of the States parties providing for submission by States parties of comprehensive reports to the Committee every four years, with brief updating reports at intervening two-year periods.

16. In accordance with article 9, paragraph 2, of the Convention, the Committee makes suggestions and general recommendations based on the examination of the reports and information received from the States parties.

17. Under article 15 of the Convention, the Committee is entrusted with the task of giving opinions and making recommendations on petitions to United Nations bodies from individuals and groups in United Nations Trust Territories and Non-Self-Governing Territories who allege racial discrimination. The Committee also gives its views and recommendations on reports provided by other United Nations bodies of legislative, judicial, administrative and other measures to combat racial discrimination in these Territories.

4. Committee on the Elimination of Discrimination against Women

18. Under article 18, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, States parties undertake to submit for consideration by the Committee a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention and on the progress made in this respect:

(a) within one year after the entry into force for the State concerned; (b) thereafter, at least every four years and further whenever the Committee so requests.

19. In accordance with article 21, paragraph 1, of the Convention, the Committee makes suggestions and general recommendations based on the examination of reports and information received from States parties.

5. Committee against Torture

20. In accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the States parties submit for consideration by the Committee against Torture reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter, the States parties submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

21. In accordance with paragraph 3 of the same article, the Committee may make such general comments on the report of a State party as it may consider appropriate and shall forward these to the State party concerned which, on its part, may respond to the Committee with any observations it chooses to make.

6. Committee on the Rights of the Child

22. Under article 44, paragraph 1, of the Convention on the Rights of the Child, States parties undertake to submit for consideration by the Committee reports on the measures they have adopted which give effect to the rights recognized in the Convention and on the progress made on the enjoyment of those rights: (a) within two years of the entry into force of the Convention for the State party concerned; (b) thereafter, every five years. Under paragraph 3 of the same article, a State party which has submitted a comprehensive initial report to the Committee need not repeat basic information previously provided. Under paragraph 4 of the same article, the Committee may request from States parties further information relevant to the implementation of the Convention.

23. In accordance with article 45 of the Convention, the Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may also invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

24. According to the same article, the Committee is empowered to transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications. In addition, the Committee may recommend to

the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child, and may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the Convention.

7. Group of Three under the Apartheid Convention

25. Under article VII of the International Convention on the Suppression and Punishment of the Crime of Apartheid, the States parties undertake to submit periodic reports to a group of three members of the Commission on Human Rights, established in accordance with article IX of the Convention, on the legislative, judicial, administrative or other measures that they have adopted to give effect to the provisions of the Convention.

26. The Commission on Human Rights, in its resolution 7 (XXXIV) of 1978, called upon States parties to submit their first report not later than two years after the entry into force of the Convention. The Commission established that subsequent reports should be submitted at two-year intervals.

27. In 1989, the Commission on Human Rights adopted resolution 1989/8 in which, upon recommendation by the Group of Three, the Commission requested States parties to the Convention to continue to submit initial reports not later than two years after the entry into force of the Convention, and to submit their periodic reports at four-year intervals, on the understanding that States parties may submit additional information to the Group at any time in the intervening period. Periodic reports need not repeat information already included in previous reports.

B. Inquiry procedures

28. One of the human rights instruments, namely, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also provides for an inquiry procedure under its article 20. Such a procedure is established by article 20 of the Convention. At the time of signature and ratification of, or accession to, the Convention, a State may declare that it does not recognize the competence of the Committee provided for in article 20. This reservation is permitted by the provisions of article 28, paragraph 1, of the Convention.

29. In respect of all the States which have accepted the procedure set out in article 20, the Committee is empowered to receive information concerning allegations of torture. If it appears to the Committee that the information received is reliable and contains well-founded indications that torture is being systematically practised in the territory of a State party to the Convention, the Committee invites that State to cooperate in its examination of the information and, to this end, to submit observations with regard to that information. It may also decide to request additional information either from the representatives of the State concerned or from governmental and non-governmental organizations as well as individuals, for the purpose of obtaining further elements on which to form an opinion.

30. If it considers that the information gathered warrants it, the Committee may designate one or more of its members to make a confidential inquiry. In that case, it invites the State party concerned to cooperate with it in the conduct of the inquiry. The inquiry may include, with the agreement of the State party, a visit to its territory by the designated members, who may then conduct hearings of witnesses.

31. The designated members submit their findings to the Committee, which transmits them, together with its own comments or suggestions, to the State party. It invites that State to inform the Committee of the action it has taken with regard to the Committee's findings.

32. After all the proceedings regarding an inquiry have been completed, the Committee may decide to include a summary account of the results of the proceedings in its annual report. Only at that stage is the work of the Committee made public.

C. Inter-State complaints

33. Three of the international human rights instruments provide for a procedure according to which States parties to the instruments recognize the competence of the monitoring bodies established thereunder to receive and consider communications from a State party claiming that another State party is not fulfilling its obligations under the instrument concerned:

(a) The International Covenant on Civil and Political Rights, article 41 (optional); competent organ: Human Rights Committee;

(b) The International Convention on the Elimination of All Forms of Racial Discrimination, articles 11, 12 and 13 (obligatory); competent organ: Committee on the Elimination of Racial Discrimination;

(c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 21 (optional); competent organ: Committee against Torture.

34. To date, this procedure has not yet been resorted to.

D. Communications procedures under treaty mechanisms

35. At present, three treaty mechanisms provide for a procedure for dealing with communications (complaints about alleged violations of the provisions of the respective international human rights treaties). These are (i) the procedure governed by the first Optional Protocol to the International Covenant on Civil and Political Rights (hereinafter referred to as the Optional Protocol procedure); (ii) the procedure governed by article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the CAT article 22 procedure); and (iii) the procedure governed by article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred

to as the CERD article 14 procedure). A fourth procedure for dealing with communications is envisaged under article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC). That Convention is not yet in force and will not be dealt with in the present report.

1. Original mandate

(a) The Optional Protocol procedure

36. The Optional Protocol to the International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. The Optional Protocol, which entered into force on 23 March 1976, lays down a procedure for the examination of individual complaints about alleged violations of the Covenant. 1/ Seventy-four of the 125 States parties to the Covenant have become parties to the Optional Protocol.

(b) The CAT article 22 procedure

37. Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46 of 10 December 1984), which entered into force on 26 June 1987, lays down a procedure for dealing with individual complaints about alleged violations of the Convention. Thirty-four out of the 80 States parties to the Convention have recognized the competence of the Committee against Torture to deal with individual complaints under the article 22 procedure.

(c) The CERD article 14 procedure

38. Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX) of 21 December 1965), which Convention entered into force on 4 January 1969, lays down a procedure for the handling of complaints from individuals or groups of individuals claiming to be victims of a violation by a State party of any of the rights set forth in the Convention. The competence of the Committee on the Elimination of Racial Discrimination (CERD) became effective on 3 December 1982, pursuant to article 14, paragraph 9, of the Convention. So far, only 19 out of the 137 States parties to the Convention have recognized the competence of CERD to deal with complaints under the article 14 procedure.

2. International legal norms and standards on which existing non-treaty mechanisms now base their activities

[Not applicable to treaty-based procedures.]

3. Conceptual framework, methods of work and procedural rules applied by each non-treaty mechanism in the discharge of its mandate

[Not applicable to treaty-based procedures.]

4. The various norms, criteria and practices established by each existing mechanism in regard to the admissibility of communications

(a) The Optional Protocol procedure

39. The norms and criteria governing the admissibility of communications are set out in articles 1, 2, 3 and 5, paragraph 2, of the Optional Protocol. These have been further elaborated in rules 87 to 92 of the rules of procedure of the Human Rights Committee (CCPR/C/3/Rev.2). The application of these norms and criteria is amply reflected in the Committee's case law, as reproduced in its annual report to the General Assembly. (See also CCPR/C/OP/1 and 2, Selected Decisions under the Optional Protocol, volume 1 and 2.)

(b) The CAT article 22 procedure

40. The norms, criteria and practices regarding the admissibility of communications are set out in article 22 of the Convention and in the corresponding rules in the rules of procedure of the Committee against Torture. The application of these norms and criteria is reflected in the Committee's case law, as reproduced in its annual reports to the General Assembly.

(c) The CERD article 14 procedure

41. The norms, criteria and practices regarding the admissibility of communications are set out in article 14 of the Convention and in the corresponding rules in the rules of procedure of CERD (rules 91 and 92). The application of these norms and criteria is reflected in the Committee's case law, as reproduced in its annual reports to the General Assembly.

5. Preliminary consideration and evaluation of communications, their referral to the interested parties and subsequent course of action

(a) The Optional Protocol procedure

42. Pursuant to rules 89, paragraph 3, and 91, paragraph 1, of the Human Rights Committee's rules of procedure, preliminary consideration and evaluation of communications submitted under the Optional Protocol may be entrusted to one Committee member, acting as Special Rapporteur for new communications. The Special Rapporteur determines whether a new communication should be referred to the State party concerned on questions of admissibility, or whether to recommend to the Committee that a communication should be declared inadmissible, without prior referral to the State party. The latter course of action is followed if there is a clear ground for declaring a communication inadmissible. If a communication is referred to the State party, subsequent course of action consists of two stages: (a) determination of admissibility; (b) examination of the merits of the claim. The Committee's

Working Group on Communications can declare a communication admissible (rule 87, para. 2, of the rules of procedure), but it cannot declare a communication inadmissible. A decision to declare a communication admissible requires the support of all five members of the Working Group. Failing that, the Working Group places a recommendation before plenary for action. The Committee in plenary also acts on recommendations from the Working Group to declare a communication inadmissible.

43. After a communication has been declared admissible, the Working Group proceeds to consider the merits of the claim and prepares draft Views for consideration by the plenary. Final Views are then adopted by the Committee as a whole, stating whether the acts or omissions complained of reveal a breach of the Covenant, or not. Any member of the Committee can append an individual opinion to the Committee's Views.

(b) The CAT article 22 procedure

44. Pursuant to rule 106 of the rules of procedure of the Committee against Torture (CAT), preliminary consideration and evaluation of communications submitted under article 22 of the Convention may be entrusted to a Working Group of five of its members. The Working Group makes recommendations to the Committee concerning the admissibility of communications submitted under article 22 of the Convention. Pursuant to rule 108 of the rules of procedure, the Working Group may solicit information from the State party on questions of admissibility before making its recommendation to CAT. In any case, no communication can be declared admissible by the Committee unless it has been transmitted to the State party and unless the State party has been given an opportunity to make its observations on questions of admissibility.

45. Pursuant to rules 110 and 111 of the rules of procedure, consideration of the merits of the claims takes place in plenary. The Committee formulates its Views, as to whether the act or omission complained about constitutes a breach of the Convention, or not. Decisions of a final nature (Views on the merits, or decisions declaring a communication inadmissible under article 22) are made public in the Committee's annual report to the General Assembly.

(c) The CERD article 14 procedure

46. Pursuant to rule 87 of CERD's rules of procedure (as amended at the Committee's forty-third session in 1993; see document A/48/18, annex V), preliminary consideration and evaluation of communications submitted under article 14 of the Convention may be entrusted either to a working group consisting of five Committee members or to a single member acting as Special Rapporteur. The Working Group or the Special Rapporteur make recommendations to CERD concerning the admissibility of communications. According to rule 92 of the rules of procedure, they may also decide on the transmittal of communications to States parties, seeking information on questions of admissibility before making recommendations to the Committee. No communication can be declared admissible without prior transmittal to the State party.

47. Pursuant to rules 94 and 95 of the rules of procedure, consideration of the merits of the claims takes place in plenary. The Committee formulates its Opinion, as to whether the act or omission complained about constitutes a breach of the Convention, or not. Decisions of a final nature (Opinions on the merits, or decisions declaring a communication inadmissible) are made public in the Committee's annual report to the General Assembly.

6. Criteria used in practice by the Centre for Human Rights for channelling communications either to an existing public machinery or into the confidential procedure governed by Council resolution 1503 (XLVIII) - Legal foundation for such criteria

(a) The Optional Protocol procedure

48. The procedure governed by the Optional Protocol is normally seen as a confidential procedure, although the Views of the Human Rights Committee and other decisions of a final nature (decisions declaring communications inadmissible) are made public, after they have been communicated to the parties under article 5, paragraph 4, of the Optional Protocol. However, the issue as to whether a communication is channelled into the Optional Protocol procedure or the confidential procedure governed by Council resolution 1503 (XLVIII) may be relevant in the context of the present report. The criteria used in practice by the Secretariat in determining whether a communication is channelled into the Optional Protocol procedure or the 1503 procedure are set out in some detail in the Secretary-General's report on existing United Nations procedures for dealing with communications placed before the thirty-fifth session of the Commission on Human Rights in 1979, pursuant to Commission resolution 16 (XXXIV) of 7 March 1978 (document E/CN.4/1317). No objections were raised by the Commission in respect of the suggested criteria. While not explicitly spelt out in a resolution or decision, the Commission's tacit approval has been regarded as a legal basis, since 1979, for the Secretariat's working methods in this respect.

49. The same criteria are applied, mutatis mutandis, when it has to be determined whether a communication should be channelled into another treaty based complaints procedure or the 1503 procedure.

(b) The CAT article 22 procedure

[See paragraphs 48 and 49 above.]

(c) The CERD article 14 procedure

[See paragraphs 48 and 49 above.]

II. NON-TREATY MECHANISMS

A. The original mandates assigned to the various non-treaty mechanisms

1. Procedure for dealing with communications, governed by Economic and Social Council resolution 1503 (XLVIII)

50. By resolution 8 (XXIII) of 16 March 1967, the Commission on Human Rights decided to place an item on the question of violations of human rights on its annual agenda. In that context, the Commission requested authority from the Economic and Social Council, inter alia, to examine information relevant to gross violations of human rights contained in the communications listed in the annual confidential list of communications pursuant to Council resolution 728 F (XXVIII) of 30 July 1959. These lists had their origin in Council resolution 75 (V) of 5 August 1947, when the Council for the first time approved the self-denying statement adopted by the Commission at its first session to the effect that it recognized that it had no power to take any action in regard to any complaints concerning human rights. The Secretary-General was nevertheless requested to compile before each session of the Commission a confidential list containing summaries of such complaints, and to furnish this list to the members of the Commission, in private meeting, without divulging the identity of the authors, unless they had no objection to the disclosure of their names. A number of minor modifications were made through the years in respect of Council resolution 75 (V). These modifications were consolidated in 1959 with the adoption of Council resolution 728 F (XXVIII). The "no power" doctrine still prevailed, but communications containing allegations of violations of human rights continued to be summarized in an annual confidential list of communications. This was the situation when the Commission in 1967 requested authority to examine communications concerning alleged gross violations of human rights, listed in the annual confidential list, and to take action thereon as it deemed appropriate.

51. By resolution 1235 (XLII) of 6 June 1967, the Economic and Social Council granted the requested authority and empowered the Commission, in appropriate cases, and after careful consideration of the information thus made available to it, to make a thorough study of situations which reveal a consistent pattern of violations of human rights.

52. It hampered the exercise of the authority to deal with communications relating to violations of human rights, that no specific procedure had been devised for that purpose. The Sub-Commission, the Commission and the Council set about devising such a procedure, which was finally established on 27 May 1970 with the adoption of Council resolution 1503 (XLVIII). Before the procedure, however, could start to function, the Council requested the Sub-Commission to devise appropriate procedures for dealing with the question of admissibility of communications. On 13 August 1971, the Sub-Commission adopted resolution 1 (XXIV) setting out "provisional procedures" for dealing with the question of admissibility of communications, and on 16 August 1971 the Sub-Commission adopted resolution 2 (XXIV), establishing the Working Group

on Communications, the screening body envisaged by paragraph 1 of Council resolution 1503 (XLVIII). The procedure started to function the following year when the Working Group on Communications met for the first time.

53. In short, the 1503 procedure lays down a three-stage mandate involving the Working Group on Communications, the Sub-Commission and the Commission. As early as 1974, the Commission added a further stage to the procedure, by establishing the Working Group on Situations. That Working Group was set up annually on an ad hoc basis, until the Council made it a permanent feature in the implementation machinery of the procedure in 1990 (Council resolution 1990/41 of 25 May 1990).

54. The role of the Working Group on Communications is to consider all communications received by the Secretary-General under Council resolution 728 F (XXVIII), together with all replies received from Governments thereon, with a view to bringing to the attention of the Sub-Commission those communications, together with corresponding government replies, as received, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms (Council resolution 1503 (XLVIII), para. 1).

55. The role of the Sub-Commission is to consider the communications and the government replies brought before it by a decision of a majority of the members of the Working Group on Communications and other relevant information, with a view to determining whether to refer to the Commission particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission (Council resolution 1503 (XLVIII), para. 5).

56. The role of the Working Group on Situations is to examine the material referred to the Commission by the Sub-Commission under the 1503 procedure, any written government observations relating thereto and any particular situation kept pending before the Commission under the procedure, and to make recommendations to the Commission on what course of action to take in respect of each particular situation (Council resolution 1990/41).

57. Pursuant to paragraph 6 of Council resolution 1503 (XLVIII) the Commission is called on to determine (a) whether a particular situation referred to it requires a thorough study and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII), or (b) whether a particular situation referred to it may be a subject of an investigation by an ad hoc committee. The latter course of action, which can only be embarked upon with the consent of the State concerned, has never been taken.

58. Paragraph 8 of Council resolution 1503 (XLVIII) lays down a general rule of confidentiality and provides that all actions envisaged in the implementation of the resolution by the Sub-Commission or the Commission

shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council. The rule of confidentiality applies also to actions taken by the Working Group on Communications and the Working Group on Situations.

2. Special procedures

59. During the past 25 years the Commission on Human Rights and ECOSOC have established a number of extra-conventional procedures and mechanisms which have been entrusted to either working groups composed of experts acting in their individual capacity or to independent individuals variously designated special rapporteurs/representatives or experts. The mandates given to such procedures and mechanisms are to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide. These procedures and mechanisms are collectively referred to as the special procedures of the Commission on Human Rights.

60. Each of the said special procedures has its own specific mandate which in certain cases has evolved in accordance with circumstances and needs, mostly upon specific directives given by the Commission. Equally, each procedure and mechanism has developed its own methods of work and adapted them to the mandates as they evolved and to the specificities of the situations to be examined. Although certain basic principles and criteria are common to all special procedures, the complexities and peculiarities of each individual mandate have often required unique approaches which have been described in the reports submitted by special rapporteurs/representatives/experts or working groups to the Commission on Human Rights.

61. It should also be noted that two working groups, i.e. the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention, have developed and placed before the Commission coherent sets of their methods of work. These methods of work are also continuously reviewed and refined so as to respond to the requirements of the mechanisms in question.

62. In an effort to respond adequately to the question put, and yet to accommodate the wide range of specificities and peculiarities among the procedures, and further taking into consideration the page limitations applicable to reports of the Secretary-General, an effort has been made to present the various applicable mandates, criteria and methods of work as succinctly and completely as possible. Thus, tables have been composed for both the "thematic" and "country-oriented" procedures under each question.

63. The first two tables reproduced below contain references to the original mandates as well as to the current mandates of the special procedures. The subsequent tables are explained in the corresponding introductory paragraphs.

i. Thematic procedures

Mandates	Original Mandate	Current Mandate
Arbitrary Detention (Working Group)	CHR res. 1991/42	CHR res. 1991/42 CHR res. 1993/36
Enforced or Involuntary Disappearances (Working Group)	CHR res. 20 (XXXVI) 1980	CHR res. 1992/29
Extrajudicial, summary or arbitrary executions (Special Rapporteur)	ECOSOC res. 1982/35	CHR res. 1992/72
Freedom of opinion and expression (Special Rapporteur)	CHR res. 1993/45	CHR res. 1993/45
Internally displaced persons (Representative of the Secretary-General)	CHR res. 1992/73	CHR res. 1993/95
Racism, racial discrimination and xenophobia (Special Rapporteur)	CHR res. 1993/20	CHR res. 1993/20
Religious intolerance (Special Rapporteur)	CHR res. 1986/20	CHR res. 1992/17
Sale of children, child prostitution and child pornography (Special Rapporteur)	CHR res. 1990/68 ECOSOC dec. 1990/240	CHR res. 1992/76
Torture and other cruel, inhuman or degrading treatment (Special Rapporteur)	CHR res. 1985/33	CHR res. 1992/32
Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (Special Rapporteur)	CHR res. 1987/16	CHR res. 1992/6

ii. Country-oriented procedures

Mandate	Original Mandate	Current Mandate
Afghanistan (Special Rapporteur)	CHR res. 1984/55	CHR res. 1993/66
Cuba (Special Rapporteur)	CHR res. 1992/61	CHR res. 1993/63
El Salvador (Special Rapporteur)	CHR res. 32 (XXXVII)	CHR res. 1993/93
Equatorial Guinea (Special Rapporteur)	CHR res. 1992/79	CHR res. 1993/69
Haiti (Special Rapporteur)	CHR res. 1992/77	CHR res. 1993/68
Iraq (Special Rapporteur)	CHR res. 1991/74	CHR res. 1993/74
Islamic Republic of Iran (Special Representative)	CHR res. 1984/54	CHR res. 1993/62
Myanmar (Special Rapporteur)	CHR res. 1992/58	CHR res. 1993/73
Palestinian territories occupied by Israel (Special Rapporteur)	CHR res. 1993/2A	CHR res. 1993/2A
Southern Africa (Working Group)	CHR res. 2 (XXIII) and CHR res. 1991/21 2/	CHR res. 1993/9
Sudan (Special Rapporteur)	CHR res. 1993/60	CHR res. 1993/60
Former Yugoslavia (Special Rapporteur)	CHR res. 1992/S-1/1	CHR res. 1993/7

B. The International legal norms and standards on which existing non-treaty mechanisms now base their activities

1. Procedure for dealing with communications, governed by Economic and Social Council resolution 1503 (XLVIII)

64. The basic norms and standards applied under the 1503 procedure are those set out in the Universal Declaration of Human Rights. The implementing bodies are also guided by the recognized rules of international human rights law, as they have found expression in international human rights treaties.

2. Special procedures

65. The special rapporteurs/representatives/experts and working groups of the special procedures of the Commission on Human Rights base their activities on those conventional and customary legal norms and standards applicable to the respective situations they monitor. Several have made specific references to these norms and standards in their reports to the Commission on Human Rights. The following table lists, to the extent the above-mentioned procedures have pronounced themselves, the most pertinent references.

i. Thematic procedures

Mandates	Location in Documents
Arbitrary Detention (Working Group)	E/CN.4/1992/20, paras. 7, 10, annex I; E/CN.4/1993/24, Deliberation 02
Enforced or Involuntary Disappearances (Working Group)	E/CN.4/1435, para. 194; E/CN.4/1492, chapter V, E/CN.4/1983/14, paras. 130, 132; E/CN.4/1984/21, chapter VI; E/CN.4/1989/18, paras. 26-33; E/CN.4/1993/25, para. 56
Extrajudicial, summary or arbitrary executions (Special Rapporteur)	E/CN.4/1994/7, para. 10; E/CN.4/1993/46, paras. 42-68; E/CN.4/1992/30, annex
Freedom of opinion and expression (Special Rapporteur)	E/CN.4/1994/33, paras. 8-12
Internally displaced persons (Representative of the Secretary-General)	E/CN.4/1993/35, paras. 55-88; E/CN.4/1994/44, paras. 19-28
Religious intolerance (Special Rapporteur)	E/CN.4/1987/35, paras. 3-6; E/CN.4/1989/44, paras. 82-87
Sale of children, child prostitution and child pornography (Special Rapporteur)	E/CN.4/1992/55, paras. 37-38
Torture and other cruel, inhuman or degrading treatment (Special Rapporteur)	E/CN.4/1986/15, paras. 22-31
Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (Special Rapporteur)	E/CN.4/1992, paras. 3, 30, 138, 139, 143-163; E/CN.4/1993/18, paras. 24, 27, 130, 135, 160

ii. Country-oriented procedures

Mandate	Location in Documents
Afghanistan	E/CN.4/1985/21, paras. 135-169
Cuba	E/CN.4/1993/39, paras. 26, 59, 63, 73, 84
El Salvador	E/CN.4/1993/11, paras. 103, 117, 227, 231
Equatorial Guinea	E/CN.4/1993/48, paras. 22, 42
Iraq	E/CN.4/1992/31, paras. 18-39; E/CN.4/1993/45, paras. 23-33
Islamic Republic of Iran	E/CN.4/1992/34, paras. 149, 248, 256, 264, 411, 415, 428, 446, 456, 458, 469, 470; E/CN.4/1993/41, paras. 7, 10, 87, 125, 126, 132, 286, 290, 292, 318-321, 323, 325, 326
Myanmar	E/CN.4/1993/37, paras. 139-199
Southern Africa	E/CN.4/1992/8 at paras. 23-24; E/CN.4/1993/14, paras. 28-29

C. The conceptual framework, methods of work and procedural rules applied by each non-treaty mechanism in the discharge of its mandate

1. Procedure for dealing with communications, governed by Economic and Social Council resolution 1503 (XLVIII)

66. The conceptual framework of the 1503 procedure represents a mechanism permitting the Commission on Human Rights, and the other bodies involved in its implementation, to consider in a meaningful manner allegations of gross violations of human rights wherever they are said to occur. In so doing, the bodies involved rely on the cooperation of the Governments concerned. The receipt of government replies and written observations on the allegations made, as well as the active participation by the Governments concerned in the closed meetings of the Commission, are considered essential.

67. The rules of procedure of the functional commissions of the Economic and Social Council are relevant to the work of the Commission on Human Rights under the 1503 procedure. In accordance with rule 24 of these rules, they also apply to the work of the other bodies involved, in so far as they are applicable.

68. At the first stage in the implementation of the procedure, the Working Group on Communications screens the communications which have been processed by the Secretariat under Council resolution 728 F (XXVIII) during a 12-month period ending 12 weeks prior to its meeting (Sub-Commission decision 1990/112 of 28 August 1990). All Government replies received under Council resolution 728 F (XXVIII) in response to these communications are duly taken into account. 3/ Because of the volume of work, a certain division of labour is agreed on by the members for prescreening purposes.

The preselections are then discussed by the Working Group as a whole and, unless there is consensus, a vote is taken as to whether a communication should be brought to the attention of the Sub-Commission. No communication can be referred to the Sub-Commission unless a decision to do so has the support of at least three of the five members. The Working Group may also decide to defer a decision in respect of a communication to its following session. The Working Group reports confidentially to the Sub-Commission.

69. At the second stage in the implementation of the procedure the Sub-Commission considers the communications and government replies brought to its attention by the Working Group on Communications and determines which particular situations to refer to the Commission on Human Rights for consideration. In so doing, the Sub-Commission may also take into account "other relevant information" (Council resolution 1503 (XLVIII), para. 5). In recent years, the Sub-Commission has taken its decisions by secret ballot, as authorized by Council resolution 1991/32. It may also decide to defer taking a decision until its next session. The Sub-Commission reports confidentially to the Commission under the 1503 procedure.

70. Once a decision has been taken to refer a particular situation to the Commission, the Sub-Commission must so inform the Government directly concerned and invite it to submit written observations to be taken into account when the Commission examines the situation (Commission decision 3 (XXX) of 6 March 1974).

71. The third stage is entrusted to the Working Group on Situations, which examines the new and pending material to be considered by a given session of the Commission under the 1503 procedure and makes recommendations to the Commission on what course of action to take in respect of each particular situation. The Working Group cannot defer a decision until its next session. It reports confidentially to the Commission. However, to facilitate subsequent participation by the Governments directly concerned at the level of the Commission itself, the Working Group communicates to them in advance the text of the relevant recommendations (Commission decision 14 (XXXV) of 12 March 1979).

72. The fourth and the final stage in the implementation of the 1503 procedure takes place in the Commission on Human Rights. In the light of the recommendations placed before it by the Working Group on Situations, the Commission considers the particular situations referred to it by the Sub-Commission and any particular situation which it had decided (at the previous session) to keep under review. It takes into account all relevant government replies received under Council resolution 728 F (XXVIII) and government observations received under Commission decision 3 (XXX) of 6 March 1974. At this stage in the procedure, the Governments directly concerned are invited to attend the respective closed meetings of the Commission, to address the Commission and to reply to any oral questions put by the members (Commission decision 5 (XXXIV) of 3 March 1978). The representatives of the Governments concerned have the right to attend and to participate in the entire discussion concerning their country and to be present when the Commission decides what course of action to take (Commission decision 9 (XXXVI) of 7 March 1980).

73. While Council resolution 1503 (XLVIII) envisages that the Commission would determine either (a) whether a thorough study is warranted in respect of a given particular situation, or (b) whether a particular situation should be investigated by an ad hoc committee, the Commission has, through the years, developed its own mechanism of implementation within the spirit of the resolution. A thorough study under paragraph 6 (a) of the resolution has only been embarked upon once, since the Commission started to apply the resolution 20 years ago, 4/ and an investigation under paragraph 6 (b) has never been resorted to.

74. Instead of the alternatives spelled out in paragraph 6 of Council resolution 1503 (XLVIII), the Commission has devised the following four alternatives in the application of the procedure:

(a) To discontinue consideration of the matter, when further consideration or action is not warranted;

(b) To keep the situation under review, in the light of any further information received from the Government concerned and any further information which may reach the Commission under the 1503 procedure;

(c) To keep the situation under review and to appoint an independent expert to enter into direct contacts with the Government and the people of the country concerned and to report back to the Commission at its following session. (Alternatively, the Commission has requested the Secretary-General to appoint a special representative for the same purpose.);

(d) To discontinue consideration of the matter under the confidential procedure governed by Council resolution 1503 (XLVIII), in order to take up consideration of the same matter under the public procedure governed by Council resolution 1235 (XLII).

75. Common to all stages in the implementation of the 1503 procedure is that all meetings of the bodies involved are closed. Confidential summary records are issued for the closed meetings of the Sub-Commission and the Commission, but not for the two working groups involved.

76. No publicity is given to the decisions taken by the Working Group on Communications, the Sub-Commission or the Working Group on Situations. However, after the Commission has concluded its work under the 1503 item each year, the Chairman makes a public statement, indicating which countries have been the subject of discussion. This practice has been followed since 1978. In the interest of equity, the Chairman also indicates which countries, if any, are no longer under consideration within the procedure.

2. Special procedures

77. To the extent that the special rapporteurs/representatives/experts and working groups of the special procedures of the Commission on Human Rights have described the framework of their reporting, reference is made to the following documents of the Commission on Human Rights. (In this regard, it should be noted that the Working Groups on Enforced or Involuntary Disappearances and Arbitrary Detention have elaborated comprehensive methods of work which were placed before, and endorsed by, the Commission on Human Rights, as found in the relevant documents listed below.)

i. Thematic procedures

Mandates	Location in Documents
Arbitrary Detention (Working Group)	E/CN.4/1992/20, paras. 12-16, annexes I and II; E/CN.4/1993/24, annex IV; E/CN.4/1994/27, annex I
Enforced or Involuntary Disappearances (Working Group)	E/CN.4/1988/19, paras. 16-30; E/CN.4/1989/18, para. 23; E/CN.4/1990/13, paras. 25-28; E/CN.4/1991/20, paras. 23-26; E/CN.4/1992/18, paras. 33-34
Extrajudicial, summary or arbitrary executions (Special Rapporteur)	E/CN.4/1994/7, paras. 13-67; E/CN.4/1993/46, paras. 5-41, 689-705; E/CN.4/1992/30, paras. 622-632; E/CN.4/1991/36, paras. 579, 589; E/CN.4/1990/22, para. 475; E/CN.4/1989/25, paras. 302-310; E/CN.4/1987/20, paras. 235-236; E/CN.4/1986/21, paras. 6-7; E/CN.4/1984/29, para. 33
Freedom of opinion and expression (Special Rapporteur)	E/CN.4/1994/33, paras. 23-32
Internally displaced persons (Representative of the Secretary-General)	E/CN.4/1993/35, paras. 4-31, 20-23, 278-279, 285-287; A/48/579, paras. 10-15, 23; E/CN.4/1994/44, paras, 14, 40-44, 63; E/CN.4/1994/44/Add.1, paras 1-5
Religious intolerance (Special Rapporteur)	E/CN.4/1987/35, paras. 20-27; E/CN.4/1988/45, paras. 9-15, 23-25; E/CN.4/1990/46, paras. 10, 12, 14; E/CN.4/1991/56, para. 11; E/CN.4/1993/62, para. 13
Torture and other cruel, inhuman or degrading treatment (Special Rapporteur)	E/CN.4/1986/15, paras. 7-54; E/CN.4/1987/13, paras. 4-11; E/CN.4/1990/17, paras. 6-14; E/CN.4/1991/17, paras. 5-18; E/CN.4/1992/17, paras 6-17; E/CN.4/1993/26, paras. 6-18, 22-25; E/CN.4/1994/31, paras. 5-13;
Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (Special Rapporteur)	E/CN.4/1992/12, paras. 18, 30; E/CN.4/1993/18, paras. 13, 14, 18

ii. Country-oriented procedures

Mandate	Location in Documents
Afghanistan	E/CN.4/1985/21, paras. 8-40
Cuba	E/CN.4/1993/39, paras. 8-10
El Salvador	E/CN.4/1992/32, paras. 1, 3, 34, 45, 70, 81, 82, 99; E/CN.4/1993/11, paras. 22, 42, 221
Equatorial Guinea	E/CN.4/1993/48, paras. 6-8
Iraq	E/CN.4/1992/31, paras. 1-10; E/CN.4/1993/45, paras. 1-5
Islamic Republic of Iran	E/CN.4/1992/34, para. 2; E/CN.4/1993/41, para. 3
Myanmar	E/CN.4/1993/37, paras. 1-7
Southern Africa	E/CN.4/1993/14, paras. 10-27
Former Yugoslavia	E/CN.4/1993/50, paras. 9-15

D. The various norms, criteria and practices established by each existing mechanism in regard to the admissibility of communications

1. Procedure for dealing with communications, governed by Economic and Social Council resolution 1503 (XLVIII)

78. The criteria for determining the admissibility of communications are established by Council resolution 1503 (XLVIII) itself ("consistent pattern of gross and reliably attested violations") and by the provisions of Sub-Commission resolution 1 (XXIV) of 13 August 1971. The latter resolution lays down basic criteria in respect of the object of the communication, the source of communications, the contents of communications and the nature of the allegations, existence of other remedies and timeliness of submission. These criteria, while mainly the concern of the Working Group on Communications and the Sub-Commission, are also taken into account by the Working Group on Situations and by the Commission itself.

2. Special procedures

79. Information on this question may be found in the resolutions establishing the specific mandates as referred to above. To the extent that the following special rapporteurs/representatives/experts and working groups of the special procedures of the Commission on Human Rights have described the information received, and/or the treatment thereof, reference is made to the following documents of the Commission on Human Rights.

i. Thematic procedures

Mandates	Location in Documents
Arbitrary Detention (Working Group)	E/CN.4/1993/24, Deliberation 02 (paras. 3-8), Deliberation 03(A)
Enforced or Involuntary Disappearances (Working Group)	E/CN.4/1988/19, paras. 16-22
Extrajudicial, summary or arbitrary executions (Special Rapporteur)	E/CN.4/1994/7, paras. 18-21; E/CN.4/1993/46, paras. 14-25, 690-691
Internally displaced persons (Representative of the Secretary-General)	E/CN.4/1993/35, paras. 13-17; E/CN.4/1994/44, paras. 55-57
Religious intolerance (Special Rapporteur)	E/CN.4/1987/35, paras. 28-87; E/CN.4/1988/45, paras. 37-52; E/CN.4/1989/44, paras. 89-99; E/CN.4/1990/46, paras. 102-108; E/CN.4/1991/56, paras. 16-31; E/CN.4/1992/52, paras. 76-164
Torture and other cruel, inhuman or degrading treatment (Special Rapporteur)	E/CN.4/1987/13, paras. 5-7; E/CN.4/1990/17, para. 6; E/CN.4/1991/17, paras. 5-10; E/CN.4/1992/17, paras 6-8;
Use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (Special Rapporteur)	E/CN.4/1992/12, para. 18; E/CN.4/1993/18, paras. 14, 15

ii. Country-oriented procedures

Mandate	Location in Documents
Afghanistan	E/CN.4/1985/21, paras. 5-7
Cuba	E/CN.4/1993/39, paras. 8-9
Iraq	E/CN.4/1992/31, para. 147; E/CN.4/1993/45, paras. 164-179
Islamic Republic of Iran	E/CN.4/1987/23, para. 87; E/CN.4/1988/24, para. 79; E/CN.4/1989/26, para. 59; E/CN.4/1991/35, paras. 464-468
Southern Africa	E/CN.4/1993/14, paras. 22-25
Former Yugoslavia	E/CN.4/1992/S-119, paras. 1-5; E/CN.4/1993/50, paras. 9-15

E. The preliminary consideration and evaluation of communications, their referral to the interested parties and subsequent course of action

1. Procedure for dealing with communications, governed by Economic and Social Council resolution 1503(XLVIII)

80. Once a communication has been summarized by the Secretariat under Council resolution 728 F (XXVIII), it automatically constitutes part of the information channelled into the 1503 procedure. Before the 1503 procedure starts to function a copy of the communication has been transmitted to the Government concerned, to permit that Government to reply to the allegations made. Thus, government replies received under Council resolution 728 F (XXVIII) constitute an integral part of the material considered under the 1503 procedure. As explained above, preliminary consideration and evaluation of communications under the 1503 procedure are entrusted to the Sub-Commission's Working Group on Communications. Subsequent course of action has already been explained above.

2. Special procedures

81. The special rapporteurs/representatives/experts and working groups of the special Procedures of the Commission on Human Rights seek to receive the widest range of information from the most direct sources, within the limits of existing possibilities, and to obtain the views of the relevant Governments on allegations received. In this connection, reference is made to more specific descriptions given under various procedures as referred to in the tables under sections C and D above.

F. Criteria used in practice by the Centre for Human Rights for channelling communications into a public machinery or into the 1503 procedure - legal foundation for such criteria

82. Communications are not "received" per se under Council resolution 1503 (XLVIII). The resolution envisages that communications "received" under Council resolution 728 F (XXVIII) would be channelled into the 1503 procedure. This was logical, at the time in question, since resolution 728 F (XXVIII) was the only global resolution applicable to Secretariat handling of communications concerning alleged violations of human rights. 5/ Subsequently, upon the entry into force of the International Covenant on Civil and Political Rights and the Optional Protocol thereto, which sets out a procedure for dealing with individual complaints, the question arose whether there would be a duplication or overlapping of work between the 1503 procedure, on the one hand, and the communications procedure under the Optional Protocol, on the other hand. It was no longer considered valid that the Secretariat would handle all communications under Council resolution 728 F (XXVIII). Practical suggestions were placed before the Commission at its thirty-fifth session in 1979, as to which communications would be channelled into the 1503 procedure, through Council resolution 728 F (XXVIII), and which communications would be channelled into the Optional Protocol procedure (see E/CN.4/1317, paras. 30 to 36). The working methods proposed by the Secretary-General have been followed, uncontested, for the last 15 years (see para. 48 above).

83. Since 1979, it has been the practice of the Commission not to take any action under the 1503 procedure, if the country concerned is being dealt with under a public procedure. In line with that approach, no material has been referred to the Commission by the Sub-Commission under the 1503 procedure since 1982 in respect of country situations considered under a public procedure within the Commission's agenda item on the question of violations of human rights. Normally, the resolutions establishing such mandates provide that information may be solicited and received from various sources. Further, the Commission has on a number of occasions decided to discontinue consideration of a country situation under the 1503 procedure, in order to take up consideration of the same matter under a public country mandate. In the circumstances, the Secretariat has adapted its working practices to be in line with the Commission's policy. This also applies in respect of the thematic mandates established by the Commission as public procedures since 1980. In short, communications relevant to established public procedures, country-oriented or thematic, are brought to the attention of the respective special rapporteurs or working groups. The above approach has been developed in consultation with the special rapporteurs and working groups concerned. In particular, thematic special procedures which concentrate their attention primarily on concrete individual cases need to be informed about all such cases brought to the attention of the Secretariat.

84. Furthermore, it should be noted that thousands of communications are each year addressed specifically to an established public mandate, thematic or country-oriented. In these cases the communications are routed to the procedure specifically indicated by the authors.

G. Procedure for dealing with communications concerning the status of women

85. By resolution 76 (V) of 5 August 1947, as amended by resolution 304 I (XI) of 14 and 17 July 1950 and resolution 1983/27 of 26 May 1983, the Economic and Social Council asked the Secretary-General to compile non-confidential lists of communications dealing with the principles relating to the promotion of women's rights in the political, economic, civil, social and educational fields, and confidential lists of other communications concerning the status of women. Both lists have to be made available to the members of the Commission on the Status of Women, the confidential ones in private meeting, without divulging the identity of the authors of the communications. The communications mechanism gives individuals or organizations the possibility to bring to the attention of the Commission on the Status of Women situations dealing with the violation of the principles relating to the promotion of women's rights in political, economic, civil, social and educational fields.

86. Upon receipt of a communication concerning the status of women, its content is communicated by the Secretary-General to the Government concerned without divulging the identity of the author, thus inviting the Government to comment on it.

87. The amendment contained in resolution 1983/27 requested the Secretary-General also to include in the lists of confidential and non-confidential communications communications received by the specialized agencies, regional commissions and other United Nations bodies and to solicit the cooperation of the United Nations system.

88. The lists contain summaries of the communications received by the Division for the Advancement of Women of the United Nations Secretariat, New York, including comments of Governments thereon, if any, as well as of communications concerning the status of women received by other units of the United Nations Secretariat, including the regional commissions, other United Nations bodies and the specialized agencies.

89. Resolution 1983/27 also authorized the Commission to appoint a working group of not more than five of its members, selected with due regard for geographical distribution, to meet in closed meetings during each session of the Commission in order to consider all communications and bring to the attention of the Commission those which appeared to reveal a consistent pattern of reliably attested injustice and discriminatory practices against women. Pursuant to that resolution, the Working Group would prepare a report, based on its analysis of all the communications, indicating the categories in which communications were most frequently submitted to the Commission.

90. By resclution 1993/11 the Economic and Social Council invited each regional group to appoint, one week before each session of the Commission, a member of the Working Group on Communications. It also requested the Secretary-General to ensure proper coordination of the activities of the Commission on the Status of Women with those of other bodies of the Council.

91. The Commission on the Status of Women has the mandate, through Council resolution 1983/27, as reiterated by resolution 1993/11, to examine the report of the working group and to make recommendations to the Economic and Social Council on what action should be taken on emerging trends and patterns of discrimination against women as revealed by such communications.

Notes

1/ The procedure also extends to complaints about alleged violations of the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty. There are 20 States parties to the Second Optional Protocol.

2/ The first mandate of the ad hoc Working Group of Experts on Southern Africa was established by Commission res. 2 (XXIII). However, the terms of that mandate were considerably altered by resolution 1991/21, in particular by paragraph 21.

3/ Pursuant to paragraph 2 (e) of Council resolution 728 F (XXVIII), each member State concerned is furnished with a copy of any communication processed under the resolution, to permit the Government concerned to reply to the allegations made.

4/ In 1978, the Commission decided that a thorough study should be conducted in respect of the human rights situation in Uganda. A Special Envoy was appointed to carry out that task. The exercise was abandoned in 1981, after the fall of the regime of President Idi Amin.

5/ Council resolution 76 (V) of 5 August 1947 concerned the handling, specifically, of communications concerning the status of women; Council resolutions 277 (X) and 474 A (XV) concerned the handling of alleged infringements of trade union rights; and Council resolution 607 (XXI) concerned the handing of communications relating to alleged forced labour (see E/CN.4/1317, paras. 37 to 42).

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/43
11 January 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 11 (d) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION: HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Human Rights and mass exoduses

Report of the Secretary-General

CONTENTS

	Page
Introduction	3
I. ACTION TAKEN BY THE SECRETARY-GENERAL	5
Annexes	
I. REPLIES RECEIVED FROM MEMBER STATES	7
Austria	7
Chad	7
Colombia	8
Cuba	9
Denmark	10
Finland	10
Guatemala	11
Iraq	12
Nepal	13

GE.94-10059 (E)

CONTENTS (continued)

		Page
II.	REPLIES RECEIVED FROM NON-MEMBER STATES	14
	Holy See	14
III.	REPLIES RECEIVED FROM UNITED NATIONS AGENCIES	17
	United Nations High Commissioner for Refugees	17
IV.	REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS	19
	International Federation Terre des Hommes	19

Introduction

1. At its forty-ninth session, by resolution 1993/70, the Commission on Human Rights invited again all Governments and intergovernmental and humanitarian organizations concerned to intensify their cooperation and assistance in worldwide efforts to address the serious problems resulting from mass exoduses of refugees and displaced persons, and the causes of these exoduses. It requested all United Nations bodies, including the United Nations human rights treaty bodies, the specialized agencies and governmental, intergovernmental and non-governmental organizations, to cooperate fully with all mechanisms of the Commission and to provide them with all information in their possession on the human rights situations creating or affecting refugees and displaced persons within their mandates.

2. The Commission also noted that the Executive Committee of the Programme of the United Nations High Commissioner for Refugees had specifically acknowledged the direct relationship between observance of human rights standards, refugee movements and problems of protection and solutions, and welcomed the High Commissioner's contributions to the deliberations of international human rights bodies and encouraged her to seek ways to make these contributions even more effective. The High Commissioner was also invited to address the Commission at its fiftieth session.

3. With respect to the complex factors that cause mass movements of populations, the Commission took note of General Assembly resolution 46/127 and welcomed the statement made by the United Nations High Commissioner for Refugees in which she emphasized the need for early response to human rights situations which threaten to generate refugees and displaced persons, or which impede their voluntary return.

4. With regard to early warning activities the Commission urged the Secretary-General to attach a high priority and allocate the necessary resources to the consolidation and strengthening of the system for undertaking early warning activities in the humanitarian area by, inter alia, the designation of the Department for Humanitarian Affairs as the focal point for early warning in this area and for strengthened coordination between relevant offices of the Secretariat concerned with early warning and organizations of the United Nations system, for the purpose of ensuring, inter alia, that effective action is taken to identify human rights abuses which contribute to mass outflows of persons. The Commission also welcomed the decisions by the Administrative Committee on Coordination to establish a regular United Nations inter-agency early warning consultation related to possible flows of refugees and displaced persons, based on the sharing and analysis of relevant information between United Nations bodies, and to designate the Department of Humanitarian Affairs as the focal point of the United Nations inter-agency early warning consultation.

5. The Commission urged the Department of Humanitarian Affairs to take the necessary steps to function effectively as the focal point of the inter-agency early warning consultation as well as all concerned bodies involved in this consultation to cooperate fully in, and devote the necessary resources to, the successful operation of the consultation.

6. In paragraph 16 of its resolution 1993/70, the Commission requested the Secretary-General to ask Governments, intergovernmental organizations, specialized agencies and non-governmental organizations for information and to prepare, within existing resources, and submit to the Commission at its present session a report outlining the principal developments in the United Nations system with regard to early warning and preventive diplomacy since the issuance of "An Agenda for Peace", paying particular attention to early warning and preventive diplomacy in the areas of human rights and humanitarian assistance.

7. It should be recalled that "An Agenda for Peace" notes that the most desirable and efficient employment of diplomacy is to ease tensions before they result in conflict - or, if conflict breaks out, to act swiftly to contain it and resolve its underlying causes. Preventive diplomacy requires, inter alia, early warning based on information gathering and informal or formal fact-finding.

8. In another development, the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action on 25 June 1993. Paragraph 23 of part I refers to the right to seek and to enjoy in other countries asylum from persecution and to the right to return to one's own country. A comprehensive approach by the international community is called for, including the countries concerned and relevant organizations. This approach should address, inter alia, the root causes of movements of refugees and other displaced persons and the strengthening of emergency preparedness and response mechanisms.

9. The General Assembly at its forty-eighth session adopted resolution 48/135 of 20 December 1993, in which it recalled its endorsement, in its resolution 41/70, of the recommendations and conclusions contained in the report of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees. It reiterated, inter alia, the call upon all States to promote human rights and fundamental freedoms and to refrain from denying these to individuals in their population because of nationality, ethnicity, race, religion or language. It requested all Governments to ensure the effective implementation of the relevant international instruments, in particular in the field of human rights and humanitarian law, as this would contribute to averting new massive flows of refugees and displaced persons.

10. The General Assembly also welcomed the recommendation contained in paragraph 3 of Commission on Human Rights resolution 1993/70 that special rapporteurs, special representatives and working groups studying situations of violation of human rights should pay attention to problems resulting in mass exoduses of populations and, where appropriate, report and make relevant recommendations to the Commission on Human Rights. It also welcomed the contributions of the High Commissioner to the deliberations of international human rights bodies, and encouraged her to seek ways to make these contributions even more effective.

11. In paragraph 10 of the resolution the Assembly took note of the emphasis placed by the Secretary-General in his report to the General Assembly at its forty-seventh session (A/47/595) on the need to develop the capacity of the United Nations for early warning and preventive diplomacy to help deter humanitarian crises. It reiterated, in that regard, its previous resolutions on the question of human rights and mass exoduses, and requested the

Secretary-General, in the further development of the capacity of the Secretariat for early warning and preventive diplomacy, to pay particular attention to international cooperation to avert new flows of refugees.

12. The General Assembly reiterated a number of provisions of the Commission resolution with regard to early warning activities. It invited the Commission on Human Rights to keep the question of human rights and mass exoduses under review with a view to supporting the early warning arrangement instituted by the Secretary-General to avert new massive flows of refugees and displaced persons.

13. Finally, the General Assembly, in paragraphs 20 and 21, requested the Secretary-General to report to the General Assembly at its fiftieth session on the strengthened role that he is playing in undertaking early warning activities, especially in the areas of human rights and humanitarian assistance, as well as on any further developments relating to the recommendations contained in the report of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees and the recommendations of the Joint Inspection Unit. It also invited the Secretary-General to include in his report to the General Assembly at its fiftieth session detailed information on the programmatic, institutional, administrative, financial and managerial efforts instituted to enhance the capacity of the United Nations to avert new flows of refugees and to tackle the root causes of such outflows.

I. ACTION TAKEN BY THE SECRETARY-GENERAL

14. The Department of Humanitarian Affairs (DHA), which was set up in April 1992, was designated by the Administrative Cooperation Committee (ACC) in October 1992 to serve as focal point in launching and coordinating the periodic inter-agency consultations on early warning of new mass flows of refugees and displaced persons. General Assembly resolution 41/70 of 3 December 1986 which endorsed the recommendations and conclusions contained in the report of the Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees should also be recalled in this context.

15. Pursuant to the decision of ACC, DHA convened the first consultation on early warning of new mass flows of refugees and displaced persons on 4 February 1993 at Geneva. The following offices and agencies were represented: United Nations Department of Political Affairs, United Nations Centre for Human Rights, United Nations Children's Fund, United Nations Development Programme, United Nations Development Fund for Women (invited upon special request), United Nations Environment Programme, United Nations High Commissioner for Refugees, Food and Agriculture Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization and DHA; the International Committee of the Red Cross and the International Organization for Migration attended in an observer capacity. (The consultative group, as established by ACC, also includes the World Food Programme.)

16. At the meeting on 4 February 1993 it was agreed that DHA should serve as focal point and facilitator of the early warning network. All participating agencies and offices were asked to designate contact persons. DHA agreed to carry out the new functions and to take the lead in identifying relevant early

warning indicators regarding new mass flows. All participants confirmed their commitment to the early warning consultation and stressed the need for careful preparation of these new meetings.

17. Since the first meeting, four additional consultations have been held at Geneva. As a rule, they have highlighted a few cases in which the group agreed that further difficulties might cause new mass exoduses, and recommended that these issues be given special attention at the executive level.

18. In light of its specific responsibility and in view of relevant provisions of General Assembly resolution 46/182, DHA has initiated work on the establishment of a humanitarian early warning system. Combining the capacities of its Geneva and New York branches, the Department has begun to implement a plan of action funded by a two-year grant from the Government of Japan. Four new staff members in the New York office are specifically engaged in the conceptualization and realization of the humanitarian early warning system which, when completed, will be very useful in underpinning the inter-agency early warning consultations.

19. DHA has also taken part in the follow-up discussion within the United Nations Secretariat on the implementation of the recommendations contained in "An Agenda for Peace" and on the establishment of an interdepartmental early warning mechanism. It is expected that once the interdepartmental effort assumes concrete form, DHA will cooperate fully with the other relevant departments and offices and help set up a fully integrated information system and early warning mechanism benefiting the political and peace-keeping as much as the humanitarian activities.

20. Since its inception, DHA, has tried to make a contribution to the prevention as well as resolution of conflicts and other crises. As the new momentum in the Secretariat begun after the issuance of "An Agenda for Peace" continues, it can be expected that major progress in information-gathering and early warning analysis will further strengthen the role of humanitarian activities in prevention of crises and in early response.

21. Finally, in compliance with the request addressed to him in paragraph 16 of Commission on Human Rights resolution 1993/70, the Secretary-General, on 26 May 1993, addressed notes verbales to all Governments and letters to United Nations bodies, specialized agencies and intergovernmental and non-governmental organizations concerned and requested them to provide him with information and views relating to the aforementioned resolution and drawing particular attention to the paragraphs noted in the introduction above. The replies received from Austria, Chad, Colombia, Cuba, Denmark, Finland, Guatemala, Iraq and Nepal are summarized in annex I to the present report; the reply of the Holy See is included in annex II; the reply of the United Nations High Commissioner for Refugees and of the International Federation Terre des Hommes are summarized and/or reproduced in annexes III and IV respectively. The International Commission of Jurists sent its report "Refugees from Myanmar" dated October 1992 while the Organization of American States stated that it had most recently studied this area in relation to the situations in Guatemala and Haiti and sent a copy of its report on Haiti.

Annex I

REPLIES RECEIVED FROM MEMBER STATES

Austria

[Original: English]
[19 October 1993]

The Federal Government of Austria welcomes the growing involvement of the Commission of Human Rights and the Centre for Human Rights in issues relating to the prevention of massive population movements. With present world trends, migration between States might develop to unprecedented levels. It is therefore of great importance that all relevant United Nations bodies increasingly devote attention to the causes of massive migratory movements and to their mitigation. It is equally important that all relevant institutions within the United Nations system closely cooperate in this regard.

The Federal Government of Austria has heavily emphasized the relationship between conflict prevention and population movements in a number of regional forums, such as the Conference of Security and Cooperation in Europe, the Council of Europe and in the contacts with neighbouring States carried out in the framework of subregional cooperation mechanisms such as the Central European Initiative.

The appropriate Austrian authorities have initiated cooperation with an independent Austrian human rights institute, with a view to make a proper assessment of human rights developments in relevant countries of origin.

In regard to paragraph 16 of the resolution, Austria welcomes the requests that the Secretary-General, within existing resources, would prepare a report to the next session of the Commission, outlining the principal developments in the United Nations system with regard to early warning and preventive diplomacy. However, according to the views of the Federal Government of Austria, this report should in particular focus on the need for preventive action to combat and mitigate the basic causes of massive migratory flows, by way of well-coordinated United Nations action, in cooperation with all other intergovernmental bodies concerned.

Chad

[Original: French]
[10 September 1993]

General Assembly resolution 44/164 of 15 December 1989 refers to the means at the disposal of United Nations bodies to avert new massive flows of refugees and displaced persons.

To facilitate this preventive role, a preliminary list of the factors contributing to refugee flows and the displacement of populations should be made. It is also important to identify internal causes within each State.

Recognition of, and respect for, the human person and the right to life are prerequisites for the promotion of human rights and fundamental freedoms in States where these rights and freedoms are constantly and ceaselessly violated by the regimes in power, despite the fact that they are responsible for ensuring their protection and observance.

Just as in the United Nations system, which has coordination and consultation machinery known as the Department of Humanitarian Affairs, an independent body with the same responsibility should be set up within States.

To ensure that the information to be gathered by the Secretary-General of the United Nations is reliable, it is important that he should contact, preferably, the Human Rights Commission of the Higher Council of Transition (CST), human rights associations and civil organizations such as trade unions in order to gain a clear idea of the situation of refugees and displaced persons.

There should be cooperation between all bodies working to prevent refugee flows and the mass exodus of populations.

Nevertheless, taking into account the fact that many Governments are involved in the suffering of populations, and to ensure greater transparency and effectiveness, the coordination, supervision and monitoring of the activities of these various bodies should preferably be entrusted to an independent body, in this case the Human Rights Commission under the authority of the Higher Council of Transition, with the participation of the political parties, human rights associations and civil organizations. Very often, an increase in the number of refugees and displaced persons is due to the failure of incumbent regimes to appreciate the scope of human rights.

Colombia

[Original: Spanish]
[16 November 1993]

A displaced person is any person who has been obliged to migrate within the national territory, abandoning his place of residence or his customary occupation, because his life, person or freedom has been jeopardized or is threatened owing to the existence of any of the following situations: internal armed conflict, internal disturbances or tensions, widespread violence, massive violations of human rights, natural or man-made disasters, or other circumstances originating from prior situations liable drastically to disturb public order.

The right to life, to security of person and to freedom are the rights most commonly violated in Colombia. Despite the legal provisions which exist to safeguard human rights, some members of the police and State agencies, as well as guerrilla groups and drug terrorist groups, have committed violations of human rights.

The massacres, tortures and disappearances in which members of the armed services, as well as guerrillas and drug traffickers, have been involved are among the most disturbing causes of internal displacement.

The use of mines in areas populated by civilians constitutes one of the most serious violations of the rules of war.

The following factors must be taken into consideration: the availability of public services, economic opportunities and development prospects, which may lead to internal population movements of a permanent nature.

In Colombia, the psychological trauma is aggravated by the fact that perpetrators of murders go unpunished; this impunity constitutes a new form of violence.

The situation of displaced women is particularly difficult. Displaced women with children have to take on the role of head of the household and shoulder responsibility for a new struggle for survival of the family.

The psycho-social consequences of displacement are innumerable and frightening: the marks left by violence and uprooting may be passed on as a kind of negative legacy through the generations, irrespective of the ultimate place of residence.

Cuba

[Original: Spanish]
[27 September 1993]

The Government of the Republic of Cuba attaches special importance to international cooperation for the prevention of new massive flows of refugees and displaced persons.

We are also in favour of strengthening coordination of humanitarian emergency assistance of the United Nations system. However, we consider that humanitarian assistance should be provided with the agreement of the Government of the host country and of the persons requiring assistance (in this case the displaced persons) in order to ensure that the humanitarian character of the machinery for early warning and preventive diplomacy does not suffer and to prevent attempts by unscrupulous Governments to use that machinery as a pretext for interfering in the internal affairs of States and violating their national sovereignty.

Cuba has traditionally been a country which grants asylum and protection to thousands of people. The most recent case was that of over 5,000 Haitian nationals who arrived on our shores following the establishment of the de facto Government at the end of 1991.

The Government of Cuba, in close coordination with the Office of the United Nations High Commissioner for Refugees, granted them protection and assistance.

Thus Cuba became the only country involved in a joint project with UNHCR for the integration of Haitian refugees into the local community.

The Government of the Republic of Cuba wishes to emphasize the need for both the United Nations and its member countries to redouble their individual and joint efforts not only to aid the most vulnerable groups of the world's population - including refugees and displaced persons - but also to contain the political, economic and social factors which give rise to mass exoduses.

Denmark

[Original: English]
[13 December 1993]

Denmark makes an important effort in order to mitigate the human pain and the social cost of mass exoduses in situations of conflict.

The former Yugoslavia is a case in point. Regarding this conflict Denmark follows a two strand strategy towards the refugee situation. One measure is to assist in the setting up of refugee camps and other shelter in the region. Another measure is to grant temporary protection in Denmark to especially vulnerable categories of displaced persons, e.g. former prisoners of war, violated women, wounded persons in need of hospital treatment or other especially needy persons.

Denmark's efforts towards refugees and displaced persons are made in close cooperation with the United Nations High Commissioner for Refugees as well as other United Nations bodies, NGOs and Governments.

Denmark also has a long-standing tradition for participation in United Nations peace-keeping operations. Denmark actively supports and attaches great importance to the efforts of the United Nations in this field. Peace-keeping operations have evolved into one of the most effective instruments for the United Nations in the enhancement of international peace and security. Peace-keeping operations, humanitarian intervention, humanitarian protection and preventive deployment are aimed at containing and helping to find a solution to a conflict, alleviating the plight of refugees and displaced persons and assisting in resettlement and are directed against the causes of such exoduses. Denmark's guards in northern Iraq, its troops and volunteers in Bosnia and Croatia and Denmark's participation in the preventive deployment in the former Yugoslav Republic of Macedonia are all examples of the active Danish involvement in this field.

Finland

[Original: English]
[16 November 1993]

The Government of Finland supports resolution 1993/70 of the Commission on Human Rights. The international community has to pay increasing attention to the early warning of mass movements. This covers addressing effectively the root causes of the refugee problems, including widescale violations of human rights in any potential countries of origin.

In participating actively in international cooperation Finland is interested to find new ways and means to intensify the existing forms of

cooperation. The Government of Finland considers it important that special emphasis is given in the resolution on cooperation between other States and organizations, with a view to preventing uncontrolled mass movements of populations.

The Nordic countries cooperate in various levels of the administration and at the ministerial level. There are annual conferences on cooperation in information services and documentation. At the regional level there is cooperation within the framework of the CSCE (Conference on Security and Co-operation in Europe).

The Government of Finland attaches great importance to the preparation by UNHCR and IOM on the mass information Programme in Russia to prevent uncontrolled migration.

The Government of Finland finds it important that UNHCR has sufficient personnel and material resources to be able to support States in the implementation of the measures required by the 1951 Convention and the Protocol. Finland provides statistical and other information for UNHCR regarding developments in the above mentioned internal cooperation.

Guatemala

[Original: Spanish]
[17 November 1993]

Guatemala is one of the three Central American countries affected by displacements of its population (the other two are El Salvador and Nicaragua) as a result of the exacerbation of the internal armed confrontation in the 1980s.

Apart from the Guatemalan refugees registered as such in neighbouring countries, this situation has obliged many families and individuals to move to other areas within the national territory as a survival strategy.

When repatriation began to get under way in 1984, three social segments that require the same kind of care were identified in the country: repatriated persons, internally displaced persons, and local population in a poverty situation. The characteristics common to all three categories are poverty and marginalization, which are manifested to extreme degrees.

Faced with this situation, the States affected by the presence of these populations have taken measures determined by humanitarian, economic, political and national security considerations.

In general, it can be stated that the migratory flows have major repercussions upon the countries of origin and destination, prominent among these being the medium- and long-term implications for economic and socio-political development.

One of the effects causing greatest concern to Governments is the pressure that these migrations exert upon the labour market in the place of

destination and the financial and institutional efforts necessitated in the receiving State in order to provide special care for these populations.

Though the protection of human rights is a universal concept, the specific problems faced by uprooted populations have created the need to establish minium rights that must be guaranteed for such populations, as is laid down in such international instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights, and the Geneva Conventions. These include, notably, the rights:

(a) To request and receive humanitarian aid without impediment;

(b) To be provided with adequate documentation;

(c) Not to be sent back to a place in the country where life, liberty or physical integrity may be endangered;

(d) To freedom of passage and movement;

(e) To family unity and, in case of disappeared families, to the benefit of measures for their settlement and reunification;

(f) Not to be identified as displaced persons if it would result in discrimination;

(g) To enjoy basic economic, social and cultural rights (such as the rights to housing, food, health, work, social security, education, etc.) like the rest of the population;

(h) Not to be subjected to forced displacements of civilian populations;

(i) To voluntary return and repatriation.

Iraq

[Original: Arabic]
[10 September 1993]

We wish to state that, on principle, the Government of the Republic of Iraq is cooperating with States and international organizations and supporting the endeavours made by the United Nations and human rights organizations with a view to developing an early warning system to avert the problem of mass exoduses or deal with it if it occurs due to various causes such as natural disasters or regional or international armed conflicts which force the population of nearby areas to leave those areas and, sometimes, to enter neighbouring States.

In this connection, we wish to emphasize the view of the Government of Iraq that the refugee problem should be kept within its humanitarian context, in accordance with international humanitarian law, and should not be magnified

by regarding it as a threat to international peace and security, thereby allowing it to be used for the achievement of biased political objectives through interference in the internal affairs of States, as is now happening in some parts of the world.

Iraq supports the humanitarian content of General Assembly resolution 46/127 and believes that there is a need to rapidly find solutions to the tragedy of the Palestinian refugees who were dispersed throughout the world as a result of the Israeli occupation.

Nepal

[Original: English]
[30 September 1993]

Nepal fully supports and concurs with the appeal made to all governmental and humanitarian institutions for the global solution of and assistance to the serious problems posed by the mass exoduses of displaced and refugee populations. Nepal, since the advent of independence and democracy, has provided shelters to refugees of foreign and Nepalese origin, and at present there are about 100,000 Bhutanese and 15,000 Tibetan refugees in Nepal. The material and humanitarian assistance received from international humanitarian organizations, including the Office of the United Nations High Commissioner for Refugees, towards the relief and other assistances to the refugees from Bhutan during the past two years are especially worth noting.

To date Nepal is not a party to the Convention relating to the Status of Refugees, 1951, and the Protocol relating to the Status of Refugees, 1967.

Keeping in view the attention drawn to the call for early warning and preventive diplomacy related to human rights and humanitarian assistance in "An Agenda for Peace", and information and details on it, evaluation and review will be made on the legal, administrative and practical reforms and progress that were made in the area of human rights.

Annex II

REPLIES RECEIVED FROM NON-MEMBER STATES

Holy See

[Original: French]
[19 November 1993]

I. The resolution addresses the problem of the relationship between displacements of population and human rights from two angles, political and technical, without placing them in opposition to each other but harmonizing them in accordance with the principles set out in the Agenda for Peace. We are pleased to note that, despite the continuing difficulties, the Organization's principles and operating rules are being gradually improved, at least as far as the work of the internal organs is concerned.

The resolution focuses on the concept of preventive diplomacy, as is confirmed by the tendency of the internal organs of the United Nations - the Commission on Human Rights in the present instance - to give a practical meaning to the concept, with its various consequences for peace-keeping, humanitarian action and the settlement of conflicts (see Agenda for Peace, III). The Holy See does not regard these various consequences as separate from the objectives of the United Nations, such as recognition of respect for human rights, within the framework of which the issue of refugees and displaced persons, strictly speaking, belongs.

To these initial comments, we would add that the resolution rightly takes note of the action already being carried out by the United Nations at the operational level - in particular through the emergency relief operations coordinated by UNHCR - as well as measures taken in the area of norms. We refer here to the instruments concerning refugees and displaced persons, the principles and guidelines contained in the resolutions, recommendations and other types of instruments adopted by various bodies or by international meetings which considered not only individual cases but also principles and guidelines reflecting the convergence of views of the majority of the members of the international community. The Holy See has also made its moral and legal contribution to the formulation of these principles.

In the opinion of the Holy See, the way in which the resolution addresses the matter of international action as a whole is particularly important, the aim being to prevent the creation of conditions that will eventually give rise to displacements of populations.

II. Consequently, the resolution's political approach to the problems arising from population displacements, which advocates preventive diplomacy, is the same as that set out in the Agenda for Peace. Its aim is to identify the problems and causes that contribute, directly or indirectly, to the occurrence of population exoduses from one country to other countries or within a given country.

The resolution specifically includes human rights violations and ethnic and other forms of intolerance among the causes. These are two types of

situations which, because of their destabilizing effect, call less for the solution of problems that have already arisen than for the elimination of their underlying causes. Regarding violations of human rights, resolution 1993/70 itself emphasizes that the Office of the High Commissioner for Refugees has already repeatedly affirmed "the direct relationship between observance of human rights standards, refugee movements, problems of protection and solutions".

Considering this issue from the ethical standpoint, the Holy See wishes to point out that neither the mere observation that causes or a series of causes exist nor even the mandatory search for solutions can excuse anyone from the obligation to denounce the individual or collective responsibility incurred by adopting, actively or passively, attitudes or behaviour that are in fact the root cause of exoduses of populations. Refugees, displaced persons and, more generally, movements of populations are the direct result of a lack of will - and only in some cases an inability - to put an end to the pursuit of "special interests", which can mean very diverse interests - economic, political, social, cultural, racial or religious.

More generally, with regard to acts of intolerance which cause internal and international displacements of populations, the resolution expressly mentions the case of minorities and therefore of lack of respect for their rights. Here the problem becomes complex, because not only must the explicit violations of the rights of minorities as such and of persons belonging to minority groups be taken into account, but also the scope of measures to destroy the ethnic, linguistic, religious or cultural heritage of minorities, which have a similar effect by refusing to recognize their identity or that of the individual members of the minority groups.

The specific measures provided for in resolution 1993/70

It should be noted that, unlike other resolutions on the same subject adopted by the Commission on Human Rights - many of which are recalled in the preamble to the resolution discussed here - resolution 1993/70 proposes direct action to "prevent" actual displacements of persons or populations by establishing an "early warning system". Or rather the position adopted was that the problem of exoduses of populations should be placed within the scope of the early warning systems envisaged in the Agenda for Peace, as an instrument put at the service of preventive diplomacy (III, para. 26). An attempt is thus being made, within the United Nations system, to coordinate the action already undertaken by various agencies, each on its own account and within the scope of its own jurisdiction, in order to achieve preventive detection of dangerous situations and to ensure that rapid intervention can take place, if necessary.

Precisely because of the need to make use of all the means of preventive diplomacy, the placing of the control of exoduses of populations within the framework of the projected early warning system, cannot fail to be supported by the Holy See.

It would appear necessary, however, to say something here about the use of this "system" in the specific case of refugees and displaced persons. The early warning system contemplated in the Agenda for Peace and called for in

the resolution, is presented as a measure "to assess whether a threat to peace exists and to analyse what action might be taken by the United Nations to alleviate it" (Agenda for Peace, para. 26). However, the gathering of information is for the purpose of international prevention or even international intervention and even in the case of displacements of populations. In this specific instance, the preventive action of an "early warning system" should be carried out on the basis of the data gathered concerning the existing or probable causes of these displacements: but will preventive action be possible in fact or will it remain subject to limitations by the States whose behaviour is the cause of the displacements?

Furthermore, should the early warning system function only for displacements of populations or should it, on the contrary, also gather information about all the problems relating to refugees and displaced persons, for example the criteria for the granting of asylum which, when they are restrictive, actually create displaced persons? The recent note on international protection (A/AC.96/825) which was submitted for consideration at the forty-fourth session of the Executive Committee of the High Commissioner's Programme, appears to pose the same type of question.

The Holy See wishes therefore to emphasize the risk of having a prevention system which does not focus on the causes of the problem but deals more specifically with the interventions to be envisaged once the displacements have started or have been completed. The international involvement would thus form a part of the usual humanitarian action which, in the case of refugees and displaced persons, comes under the jurisdiction of the Office of the United Nations High Commissioner for Refugees.

Annex III

REPLIES RECEIVED FROM UNITED NATIONS AGENCIES

United Nations High Commissioner for Refugees

[Original: English]
[17 December 1993]

To address the growing global refugee problem the High Commissioner has committed the Office to a three-point strategy of prevention of the circumstances which force people to flee, preparedness to provide effective protection and assistance, and solutions, particularly through voluntary repatriation. While the Office continues to do the outmost within its mandate to provide international protection to refugees and to seek durable solutions to their problems, the comprehensive approach summed up in the three-point strategy requires the active involvement of States, United Nations bodies and other intergovernmental organizations, and non-governmental organizations. The importance of this comprehensive strategy has been recognized by the 1993 World Conference on Human Rights and the United Nations General Assembly, as well as by the Executive Committee of the High Commissioner's Programme.

One element in the comprehensive strategy is accurate information on potential humanitarian disasters. The Office participates actively in the inter-agency consultative mechanism on early warning chaired by the Department of Humanitarian Affairs, sharing information on situations which may create or affect mass exoduses. The Office is also discussing on a regular basis, both with DHA and with the interested academic community, ways and means to develop a coherent and effective system for the collection and analysis of early warnings of humanitarian crises.

Another key element of the comprehensive strategy is early and effective response to early warning. Strengthened implementation of human rights standards can address the causes that force people to seek protection in another country, ensure that those in need of asylum are able to obtain it, and improve conditions in the home country so that those who have fled can return home voluntarily.

As the High Commissioner has observed in her statements at the forty-eighth and forty-ninth sessions of the Commission on Human Rights, the Commission can play an important role in focusing attention on human rights situations which are generating or threatening to generate refugees or which impede their voluntary return. Many such situations fall within the mandates of existing country-specific or thematic mechanisms, including but not limited to that of the Secretary-General's Representative on internally displaced persons, thus providing members of the Commission and others in the international community with opportunities to examine more closely the links between implementation of human rights standards, or lack thereof, and refugee flows.

The Office has also noted with interest the establishment of a sub-item on the Commission's agenda entitled "Human rights, mass exoduses and displaced persons". This is a welcome recognition of the importance of focusing debate

on effective means to respond to violations or threatened violations of human rights before large numbers of people are forced to flee. As one contribution to such a debate, the Office wishes to draw to the attention of the Commission on Human Rights its recently-published State of the World's Refugees: The Challenge of Protection, which analyses the world refugee situation not only in terms of humanitarian action but in the broader context of political initiatives to promote peace, development and human rights. Members of the Commission and others may also wish to refer to the latest UNHCR annual report to the United Nations Economic and Social Council (E/1993/20), which provides information on the main activities carried out by the Office for the benefit of refugees and displaced persons.

Annex IV

REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

International Federation Terre des Hommes

[Original: French]
[4 November 1993]

IFTDH wishes to draw the attention of the Commission on Human Rights to the question of anti-personnel mines, since it is closely linked to that of mass exoduses.

The indiscriminate use of such mines wounds and kills more people after the end of hostilities than during the fighting. Entire villages, tracts of arable land and forests become no-go areas. According to some estimates, there are about 100 million mines scattered throughout the world, and 800 people die each month from mine-inflicted injuries. Most of the victims are civilians living in developing countries, and particularly women, children and farmers. The use of anti-personnel mines has consequences for population movements. Such mines can make areas uninhabitable for decades, and refugees are prevented from returning to their homes when these are in places exposed to mines. Not only do the refugees risk being wounded or killed by mine explosions, but their land has become uncultivable, thereby depriving them of their means of subsistence.

It also becomes very difficult for displaced persons to contemplate returning to their land, and thus an entire reconstruction effort following an armed conflict is disrupted and the situation of displaced persons is prolonged indefinitely.

Although mines are generally used in conflicts as such, they are also increasingly employed for other purposes, for example to control population movements and to contain flows of refugees from one country to another.

It is clear that the indiscriminate use of anti-personnel mines constitutes a violation of human rights which has implications for the question of displaced persons and refugees. Paragraph 16 of resolution 1993/70 refers to preventive diplomacy in the areas of human rights and humanitarian assistance. Such preventive diplomacy should take account of the question of mines and incorporate it in a broader programme for restoring peace after conflicts. According to paragraph 58 of "An Agenda for Peace", demining is vitally important for the establishment and maintenance of peace. It also serves to restore agriculture and transport, which are indispensable to economic recovery. IFTDH considers that, in addition, refugees wishing to return to mine-exposed areas should be given adequate training so as to enable them to escape the dangers. Lastly, in the longer term, United Nations preventive diplomacy should seek the total prohibition of anti-personnel mines.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/43/Add.1
28 January 1994

Original : ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 11 (d) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION: HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Human rights and mass exoduses

Addendum

CONTENTS

	Page
REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS	2
Amnesty International	2

GE.94-10433 (E)

REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

Amnesty International

[Original: English]
[28 October 1993]

Amnesty International sent with its submission its most recent published external reports on a number of countries, namely Afghanistan, China, Colombia, Indonesia, Peru, Sri Lanka, Sudan, Tadzhikistan, Tunisia, Turkey and Zaire. These reports describe in detail Amnesty International's concerns in those countries, including cases of arbitrary detention, torture, "disappearance", political killings and the death penalty.

In its submission Amnesty International notes that it has documented serious and widespread human rights violations in many countries from which large numbers of people have fled and are currently seeking protection elsewhere. The organization believes that many of the most pressing refugee situations currently facing the international community have arisen as a direct consequence of such violations. The organization observes that the Commission on Human Rights itself has for a number of years recognized that human rights violations are one of the causes of refugee movements and mass exoduses. However, as indicated in the organization's statement to the Commission on Human Rights at its forth-ninth session, the Commission has not made any concerted effort to follow up on the link between human rights violations and refugee movements in its consideration of the human rights situation in countries around the world, and to take appropriate measures. Amnesty International believes the Commission on Human Rights must follow up on this link and take measures which will show it is willing to tackle human rights violations before they lead to mass exoduses.

The organization is submitting these documents because it believes that they describe in detail human rights violations which are certainly contributing to the refugee movements from these countries. In some cases, while there may not have been a sudden mass exodus of refugees across an immediately adjacent frontier, Amnesty International is aware that several thousands of people have left over a period of time and sought asylum in other States. In other cases, the human rights violations are contributing to large numbers of internally displaced persons who might eventually be forced to flee across an international frontier. Thus, Amnesty International believes that immediate measures to halt these violations would greatly reduce the need for people to flee their countries in search of protection elsewhere, and would go some way to allowing for refugees who have already fled to return home safely.

The list of countries covered does not include every situation where the link between refugee movements and human rights violations is apparent. However, it does cover countries where Amnesty International believes the Commission should take prompt action to ensure respect for fundamental human rights. Some of the countries listed, such as Afghanistan, Sudan and Zaire, are already on the Commission's agenda and Amnesty International will be

urging the Commission at its next session to renew the mandates of the Special Rapporteurs for these countries. However, much more effective and concerted action is required if new refugee flows are to be averted, and before the refugees who have already fled will be able to return safely home. The other countries listed above are not on the Commission's agenda, or have received only scant attention by the Commission, and Amnesty International believes that at its next session the Commission should give careful attention to the human rights situation in these countries and take the necessary action to address these violations which are contributing to refugee movements.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1994/44
25 January 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Agenda item 11 (d) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Internally displaced persons

Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95

CONTENTS

	Paragraphs	Page
Introduction	1 - 6	2
I. OVERVIEW OF THE CRISIS	7 - 12	3
II. OPERATIONAL ELEMENTS OF THE MANDATE	13 - 39	4
A. Country profiles	14 - 18	4
B. Legal standards	19 - 28	5
C. Institutional mechanisms	29 - 39	8
III. IMPLEMENTATION OF THE MANDATE	40 - 60	10
A. Methodology	41 - 44	11
B. Relevant activities	45 - 52	11
C. Future plans	53 - 60	13
IV. CONCLUSIONS	61 - 63	15

GE.94-10345 (E)

Introduction

1. The appointment of the Representative of the Secretary-General on internally displaced persons in July 1992 and the extension of his mandate by the Commission on Human Rights at its forty-ninth session were significant steps in addressing the human rights dimension of the problem of internal displacement. The Representative's preliminary report to the forty-eighth session of the General Assembly (A/48/579) briefly covered the activities in which the Representative has been engaged since his appointment and those he plans to carry out during the next phase of his mandate. The present report updates the information included therein and outlines in some detail his programme of activities and the progress of its implementation.

2. As will be recalled, the Representative presented a comprehensive study (E/CN.4/1993/35) to the Commission on Human Rights at its forty-ninth session, as requested by its resolution 1992/73 of 5 March 1992, in which he set out the elements of the debate on the issue of internally displaced persons. Subsequently, the Commission adopted, without a vote, resolution 1993/95 of 11 March 1993, in which it requested the Secretary-General to extend the mandate of his Representative for a period of two years. The Commission requested the Representative to continue his work, including dialogue with Governments, aimed at a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions, with a view to identifying, where required, ways and means of improving protection for and assistance to internally displaced persons. It also requested the Representative to submit annual reports on his activities to the Commission on Human Rights and to the General Assembly.

3. In the same resolution, the Commission encouraged the Representative to cooperate and coordinate with the Department of Humanitarian Affairs of the Secretariat, the Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross and called upon these bodies and intergovernmental and non-governmental organizations to continue to cooperate with the Representative and facilitate his tasks. The Commission also called upon all Governments to continue to facilitate the tasks and activities of the Representative, including, where appropriate, through extending invitations for country visits.

4. In its decision 1993/285 of 28 July 1993, the Economic and Social Council approved the request contained in resolution 1993/95, which authorized the Representative to begin discharging his mandate. Two months later, the Representative submitted his report to the General Assembly (A/48/579), following which the Assembly adopted, without a vote, resolution 48/135 of 20 December 1993. The General Assembly, in its resolution, encouraged the Representative, through dialogue with Governments, to continue his review of the needs for international protection and assistance of the internally displaced, including his compilation and analysis of existing rules and his suggestions and recommendations with regard to the institutional aspects of providing for these needs. It also called upon all Governments and concerned United Nations agencies and organizations to continue to facilitate his activities and support him in the implementation of his programme.

5. It should be mentioned at the outset that the resources available to the Representative, both human and material, are minimal in comparison with the monumental challenge presented by the mandate. Unfortunately, the Centre for Human Rights has so far not been in the financial position to make available more than limited short-term assistance. The Government of Norway has also given financial support to the mandate. While this generosity is most appreciated, it goes without saying that much more by way of human and material resources is required to fulfil the objectives of the mandate to a satisfactory degree.

6. Given the constraints under which the Representative of the Secretary-General has had to operate, his activities have so far focused on continuing to raise the level of consciousness about the crisis of internal displacement, sharpen understanding of the issues involved, maintain close consultation with the specialized circles within the United Nations system and the international community, pursue invitations from Governments for field visits to affected countries to see the conditions on the ground and to enter into dialogue on behalf of the internally displaced, and explore more effective ways of addressing the crisis beyond his mandate. These operational principles constitute the framework for this report, which is essentially interim in nature.

I. OVERVIEW OF THE CRISIS

7. The Commission on Human Rights has offered urgently needed leadership to the international community by establishing the mechanism to study, monitor and help address the problem of internal displacement. The crisis is, however, monumental, both in scope and intensity, and goes beyond the traditional human rights concerns, although protection remains the most crucial issue involved. Despite the magnitude of the crisis, the international community is both legally and organizationally ill prepared for an effective response to this global humanitarian and human rights tragedy. There is, therefore, an urgent quest for the development of ways and means to provide international protection for and assistance to the internally displaced and all those in similar circumstances of need.

8. In order to underscore the dimensions involved and the urgency of the quest for a global strategy, several points need to be highlighted about the crisis of internal displacement, its connection with domestic conflicts and the need for international action.

9. The first point that needs to be emphasized is the magnitude and scope of the problem. It is now generally recognized that the global population of internally displaced persons is in the range of 25 million people, compared with a refugee population of around 18 million worldwide. The statistics, tragically, continue to escalate with developments around the world. Nor is the crisis confined to certain areas of the world; it is truly global, affecting virtually all regions.

10. The second point to be emphasized is that while there are many causes of internal displacement, the most common and particularly formidable are internal conflicts, communal violence, forced relocation and other gross violations of human rights. The conditions vary significantly from country

to country, making the inquiry into the root causes a complicated task. Nevertheless, it has been observed that internal wars, especially those pertaining to racial, ethnic and religious conflicts, tend to reflect a crisis of national identity which generates cleavages between the controlling authority, be it the Government or opposing forces, and the affected civilian population. As a result, this population often falls into a vacuum wherein responsibility normally associated with State sovereignty is absent.

11. The third factor which needs to be highlighted is that given the magnitude of the human suffering involved in the crisis of national identity, the international community is often called upon to step in and meet the humanitarian challenges posed by the absence of national responsibility. The challenge is not only one of providing material assistance to the needy, but also of ensuring their physical protection and respect for their fundamental human rights.

12. The fourth factor to be underscored is that whatever can be done to alleviate the human suffering involved, the problems of internal displacement can only be solved by addressing the root causes, which are often embedded in civil wars. Only peace can restore the confidence of the displaced and encourage them to return to their homes and resume normal life. Conversely, as long as war prevails, not only will deprivation persist, but respect for human rights and fundamental freedoms will remain, almost by definition, elusive.

II. OPERATIONAL ELEMENTS OF THE MANDATE

13. The main operational elements of the mandate as contained in the resolutions of the Commission on Human Rights and the General Assembly comprise on-site visits to affected countries, dialogue with Governments, an appraisal of the existing legal standards and the degree to which they provide adequate protection, and an assessment of the institutional arrangements of the international community in general and the United Nations system in particular to determine the degree to which they cater for the needs of the internally displaced.

A. Country profiles

14. The Commission on Human Rights and the General Assembly have appropriately emphasized the significance of country visits as they provide insight into the situation on the ground where the problems of internal displacement are manifest. The goal of the Representative is to compile country profiles based on field visits and other sources of information otherwise available. It is hoped that such country profiles will provide a pool of information on the various dimensions of internal displacement: how the problem is manifested in individual countries, what remedies are provided by the Governments and the international community, and what gaps exist that need to be filled.

15. There are two discernible aspects to country studies: one is to acquire insights from them that may be useful in deepening understanding of the generic problems of internal displacement as a global crisis; the other is

focused more on specific situations and what needs to be done by the Governments concerned and the international community to address the problems involved.

16. While the visits undertaken by the Representative to several countries during the first phase of the mandate aimed at gaining a cursory impression of the situation on the ground and opening a general discussion of the issues with the authorities, the visits envisaged for the second phase are intended to provide a more in-depth understanding of the problems and the needed remedies. They therefore require more time for preparation, travel and dialogue.

17. The process of selecting the countries to be visited will take into account not only the magnitude of the problem, but also the geographical variation and the diversity of the causes of displacement. Field visits will aim at initiating a dialogue first and foremost with the relevant government authorities on the generic problems of internal displacement and their possible long-term solutions. It is also envisaged that field observations and discussions will lead to a more accurate and pragmatic definition of the term "internally displaced persons", as several delegations urged during the discussion of the item at the last session of the Commission. The emphasis will be on the word "displaced" and the needs emanating from it so as to be flexible enough to include returnees, potential refugees and other vulnerable groups, as well as the correlative causes of displacement. 1/

18. Beyond the generic issues of internal displacement as a worldwide phenomenon, dialogue with the Governments will focus on the specific dimensions of the problems in the specific context of the country concerned, their possible solutions and the initiatives undertaken by regional bodies to address the protection needs of the internally displaced. The mere fact of the visit attracts the attention not only of the Government but also of the other members of the society and generates a discourse that could prompt internal initiatives to deal with the problems. Both the generic and the specific dimensions of the country profiles can provide information that could eventually be more widely shared and used in formulating standards and strategies of international validity and application.

B. Legal standards

19. Another task to be accomplished under the mandate is an assessment of the present situation with respect to existing international law to determine the degree to which it provides an adequate basis for the protection of the internally displaced. Controversy still prevails among lawyers as to the scope and applicability of existing legal doctrine. There are those who believe that the existing standards provide adequate protection and that the main challenge is one of implementation. The proponents of this view believe that to hold otherwise would be to put into question the legal foundation for accountability. In contrast, there are those who maintain that legal reform is necessary to ensure complete and adequate coverage. While both points of view emanate from the need to strengthen protection, the second implies that setting new standards would not only fill any existing gaps but would also focus international attention and thereby raise the level of public awareness of the problem and the need for solutions. Although the basic legal issues

involved were covered in the comprehensive study of the Representative of the Secretary-General, it may be useful to outline the main principles in the present report.

20. The principal sources of the existing standards for protection, as well as the foundations for articulation of further protections, are found in international human rights law, specifically the Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights and the 1966 International Covenant on Economic, Social and Cultural Rights; humanitarian law, which comprises the four Geneva Conventions of 1949 and the two Additional Protocols of 1977; and refugee law, embodied in the 1951 Convention relating to the Status of Refugees and the 1967 Protocol. The wide array of rights enshrined in the corpus of human rights law is applicable to situations common to the displaced. These rights cover the minimum standards of human existence and dignity: physical protection, shelter, food, clothing, basic health, work, and the integrity of the person and the family as the most fundamental social unit.

21. The responsibility for meeting these needs for protection and assistance rests first and foremost with national Governments. However, in situations of displacement, the State may be required to take additional measures in order to safeguard these rights, which it might be unable or unwilling to do. Furthermore, human rights are subject to derogation during periods of public emergency, which often coincide with the times of greatest need for protecting the displaced. Finally, human rights law does not directly address some of the most critical situations affecting the displaced, such as forcible displacement or return to unsafe areas and access to humanitarian assistance.

22. A more elaborated right to humanitarian access and humanitarian assistance, including the right to food, has, therefore, been advocated. 2/ Since basic economic, social and cultural rights form part of international customary law, Governments unable to protect them adequately are obliged to avail themselves of international cooperation. It could be argued further that individuals are also entitled to receive international assistance when such rights are at risk, even if the Government concerned is unwilling to request such assistance.

23. It is also generally acknowledged that internally displaced persons face more risks with regard to their physical safety than the rest of the population. Standards to address these special protection needs may be appropriate. Special guidelines for the protection problems that women and children face are also necessary. Such guidelines have already been developed within the United Nations system in order to deal with the protection needs of refugees and important principles could be derived from them and further elaborated. 3/

24. Humanitarian law, which codifies the principle that those not directly participating in the hostilities shall be treated humanely, contains provisions which are of great value to the displaced. Particularly relevant is article 3, common to all four Geneva Conventions, which, in the case of armed conflicts not of an international character, categorically prohibits violence to life and/or person, the taking of hostages, and outrages upon the personal dignity of persons. Equally important is article 17 of Protocol II

Additional to the Geneva Conventions (1977), which deals with displacement of civilian populations in internal conflicts and sets out restrictions on such movements. It provides guarantees to the civilian populations if these movements, for imperative reasons, have to take place and prohibits their being compelled to leave their territories for reasons related to the conflict. While useful, this provision applies only to persons displaced because of armed conflict, and only to States parties to Additional Protocol II.

25. Efforts to convince Governments to ratify the Geneva Conventions and the Additional Protocols are, consequently, essential. These legal instruments include important safeguards with regard to forcible displacements of civilian populations in the course of armed conflicts. There is an increasing awareness, however, that the prohibition of displacement needs to be formulated more generally. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has begun to study the subject of population transfers (E/CN.4/Sub.2/1993/17) while scholars and experts have also elaborated minimum humanitarian standards that include such a right (see E/CN.4/Sub.2/1991/55).

26. Despite the fact that internally displaced persons have much in common with refugees, refugee law applies by definition only to persons who have crossed an international border. While some have argued that this is an arbitrary distinction, it is of enormous consequence, as a displaced person's presence in a country other than his or her own implicates a well-established protective regime, the core of which is the concept of non-refoulement (the right of non-return to a territory where the refugee's life or freedom would be threatened because of race, religion, nationality, membership of a particular social group or political opinion). For internally displaced persons, one of the most important rights provided for in refugee and human rights law is the right to seek asylum. It is important that this right not be undermined while efforts are being made to strengthen the standards for protection of internally displaced persons.

27. Given the similarities in the situations of internally displaced persons and refugees, many important principles can be drawn by analogy from refugee law for the protection of internally displaced persons. For instance, the articulation of a right not to be forcibly returned to areas where the life or freedom of the displaced person could be threatened could be vital in some cases. During his visit to Sri Lanka in November 1993, for example, the Representative noted not only the existence of such a problem, but also the Government's effort to enshrine this principle in a circular entitled Resettlement Guidelines. Other similar rights could include the right to seek residence in a safe place, the right to be provided with adequate documentation, the right not to be identified as a displaced person if that would result in discrimination, the freedom of movement especially in and out of the camp or other shelter for the displaced, the right to benefit from measures towards family reunification and the right to voluntary return to the original area of residence.

28. Without prejudicing the issue of whether or not new normative standards are needed, it is generally recognized that even though the existing law appears to be adequate for the needs of internal displacement, a consolidation

and evaluation of existing norms would be of value and would provide the basis for filling whatever gaps may exist. Building on the knowledge acquired from the practical experience on the ground, as well as the expertise of scholars with experience in this area of the law, the proposed project would aim at the development of ideas for normative standards based on principles of existing international instruments. The goal would be to develop a doctrine of protection specifically tailored to the needs of the internally displaced. This requires first a compilation/commentary of the existing norms and a further elaboration of the relevant standards (in the form, for instance, of a code of conduct) and, eventually, a declaration or other authoritative document.

C. Institutional mechanisms

29. The third task of the mandate requires reviewing and evaluating the existing international institutions, their mandates and operations, and the extent to which they provide coverage for the needs of the internally displaced. Although this area too was covered in the comprehensive study, it may be useful for the purpose of this report to review the elements of international institutional arrangements that are pertinent to the internally displaced. Prior to the appointment of the Representative of the Secretary-General on internally displaced persons, there was no provision for the collection of information by the United Nations about the protection problems of the internally displaced or any public international reporting or monitoring of their protection needs. Although the appointment of the Representative of the Secretary-General is a significant step in the right direction, it can hardly be expected to provide adequate protection for internally displaced persons. There is still a pressing need for an agency or department within the United Nations system that would be operationally and comprehensively responsible for the assistance and protection of internally displaced persons.

30. Notwithstanding the shortcomings of the present system, the impression must not be given that no programme of protection and assistance relevant to the internally displaced currently exists in the international system. Within the United Nations system, the role of UNHCR is the most pertinent to the needs of the internally displaced. Despite the fact that this population generally falls outside the mandate of the agency, UNHCR has often provided protection and assistance to internally displaced persons in specific circumstances.

31. UNHCR has further developed the criteria for its involvement in such cases during the last year. Its work with this group has traditionally been in the context of voluntary repatriation programmes, where displaced persons are intermingled with returning refugees and the local population. In situations where both categories of person live in the same area, UNHCR's assistance to the displaced provides a link with the organization's mandated activities. Another situation of concern to UNHCR arises where the same causes have produced both internal displacement and refugee flows, or where internal displacements risk turning into refugee movements. In such cases, the emphasis is on prevention. UNHCR may also become involved through special operations, undertaken at the request of the Secretary-General or the General Assembly, on a good offices basis. Such is the case in Sri Lanka,

with respect to UNHCR's programme of Open Relief Centres, which the Representative had an opportunity to discuss with UNHCR field staff in that country. Situations also occur whereby UNHCR participates in international or regional arrangements for the provision of development and humanitarian assistance to refugees and internally displaced persons.

32. In all cases, UNHCR's activities on behalf of internally displaced persons must be based on the consent of the concerned country or other relevant entities and should receive adequate financial support. UNHCR emphasizes that its mandate and expertise are in the area of protection and solutions and that it should consequently be expected to act in pursuit of these basic objectives when it is requested or allowed to assist the internally displaced.

33. Another organization whose mandate and activities are prominent to the internally displaced is the Department of Humanitarian Affairs (DHA). As a coordinating body, DHA has the task of facilitating the response of the operational organizations of the United Nations system to humanitarian emergencies through ensuring the most effective deployment of its human, financial and material resources. In this context, one of the items that the Inter-Agency Standing Committee of DHA is supposed to harmonize is humanitarian assistance to the internally displaced. On 5 July 1993 the Inter-Agency Standing Committee endorsed a proposal for a study which is to be conducted by its task force on internally displaced persons and presented to the Inter-Agency Standing Committee at a later stage. The main emphasis of the study is to be on operational mechanisms on the country level to ensure coordination of humanitarian assistance. However, protection as such, outside the context of de facto protection through humanitarian assistance and presence, falls outside the mandate of the Department of Humanitarian Affairs. In terms of field presence, it should be recalled that by virtue of General Assembly resolution 44/136, the United Nations Development Programme (UNDP) resident representatives, in their capacity as United Nations resident coordinators for humanitarian relief, have been assigned the function of coordinating assistance for internally displaced persons.

34. With respect to possible institutional reforms, the framework for protection within the context of the United Nations institutions and specialized agencies has been clearly articulated in the Vienna Declaration and Programme of Action (A/CONF.157/23), which was adopted by the World Conference on Human Rights. Paragraph 23 of part I calls for a "comprehensive approach" by the international community, which should encompass all three elements of prevention, protection and solutions.

35. In the case of internally displaced persons, as in the case of refugees, the content of protection has to be defined with reference to their specific needs. Unlike the case of refugees, however, with internal displacement there is no crossing of borders and, therefore, no clear signal that a need for international protection may arise. Protection can take various forms. As the Representative was told in Sri Lanka, providing humanitarian assistance, which requires presence in the country, implies de facto protection. Protection can also be enhanced through the promotion of human rights education and assistance to legal aid and human rights non-governmental

organizations, encouragement of the establishment of minimum standards of treatment of the internally displaced, the stationing of monitors in the field and dissemination of relevant information.

36. Several proposals have been suggested to promote international protection for the internally displaced. One such proposal relates to the development of an effective early-warning system to alert the international community to conditions that might cause displacements and encourage action to remedy those conditions. It has been observed that while the United Nations has made some progress with the establishment by the Administrative Committee on Coordination (ACC) of the Ad Hoc Working Group on Early Warning regarding New Flows of Refugees and Displaced Persons, much more needs to be done. Any early-warning or other collection of information system requires stronger cooperation among the different United Nations agencies and departments; it also requires the establishment of channels of communication among human rights groups and humanitarian agencies, as appropriate.

37. Within the work of the Commission, in its resolution 1993/70, the Commission reiterated its recommendation that special rapporteurs, special representatives and working groups studying situations of violations of human rights should pay attention to problems resulting in mass exoduses of populations and report to the Commission thereon. Where human rights monitors are deployed in the field, they should also report on the situation of internally displaced persons in the relevant country.

38. On the regional level, it has been suggested that cooperation with the regional bodies needs to be established. Obvious partners in efforts to address the problem of internal displacement include, for instance, the Organization of American States, the Organization of African Unity and the Conference on Security and Cooperation in Europe, as well as their respective humanitarian, political, and human rights institutions and departments. The deployment of human rights monitors on the regional level could also be envisaged, both for protecting the internally displaced and for more general human rights purposes.

39. On the country level, sharing of information, cooperation and coordination among United Nations agencies and non-governmental organizations is highly desirable. During his mission to Sri Lanka, the Representative was in a position to appreciate the beneficial effects of the regular meetings of the United Nations agencies and NGO representatives. The United Nations agencies could increase their inter-agency training programmes in the field, and in doing so, pay particular attention to the protection needs of the displaced populations, wherever they exist. The exchange of staff among the agencies, for instance, protection officers from UNHCR seconded to the United Nations resident coordinators, might be another option for enhancing protection for the internally displaced.

III. IMPLEMENTATION OF THE MANDATE

40. Three themes need to be highlighted with respect to the implementation of the mandate: the methodological or operational orientation of the mandate, the range of activities which have so far been undertaken and the future programme of work.

A. Methodology

41. In carrying out his mandate, the Representative of the Secretary-General has been guided by a number of principles and assumptions. The most important one is that his efforts should enhance the prospects for providing effective protection and assistance for the internally displaced; since they fall within the domestic jurisdiction, this can best be done through dialogue and cooperation with the Government. Cooperation with Governments is, however, predicated on the assumption that sovereignty carries with it responsibility for ensuring protection and assistance for the citizens.

42. Where there is a failure to discharge that responsibility and masses of people fall victim in consequence, it should be established whether there are objective reasons which may have to do with lack of capacity or resources. In such cases, Governments can be expected to invite, or at least welcome international cooperation in providing the required protection and assistance. However, where the need is apparent and masses of the population are affected, and the Government is incapable or unwilling to provide protection and assistance, whether by itself or in cooperation with foreign donors, then some form of international action becomes an imperative.

43. It is important to remember that there is in fact considerable variation in the performance of Governments or other controlling authorities in providing their citizens with adequate protection and assistance. During his recent mission to Sri Lanka, for instance, the Representative was impressed by the commitment of the Government to deliver food and medical services to areas controlled by the rebel forces and the tacit cooperation of all concerned with the provision of basic needs to the needy population.

44. Where Governments endeavour to discharge their obligations, the principles of an appropriate strategy should aim at facilitating the cooperation of the Governments with the international community in providing protection and assistance to the internally displaced, within the framework of national sovereignty. In the exceptional cases in which there is a glaring failure on the part of a Government to live up to the responsibilities of national sovereignty because of lack of capacity or political will, it becomes incumbent on the international community to assert its concern and responsibility in order to fill the moral void and provide the suffering masses with the needed protection and assistance.

B. Relevant activities

45. Since the extension of his mandate by the Commission on Human Rights, the activities of the Representative of the Secretary-General have focused on maintaining contacts and consultations with a wide array of organizations, groups and individuals whose areas of expertise or operational activities are pertinent to the internally displaced. This period has been mostly one of reflecting on the issues, exchanging views and planning for an effective response to the challenges of the mandate.

46. Shortly after the extension of the mandate, the Representative travelled to Geneva where he had consultations with the agencies mentioned in the Commission's resolution 1993/95 (i.e. the Department of Humanitarian Affairs

of the Secretariat, the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and the International Organization for Migration), with non-governmental organizations, and with the Special Rapporteur on population transfers of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

47. Apart from the consultations which he has held in Geneva with the specialized agencies in accordance with paragraphs 5 and 6 of resolution 1993/95, the Representative has been in continuous communication with the United Nations High Commissioner for Refugees, in an attempt to draw from her agency's experience with internally displaced persons and its expertise with issues relating to refugees and displacement. He has also been in contact with the Department of Humanitarian Affairs, in order to coordinate his activities with and contribute to the work of the DHA-led task force of the working group on internally displaced persons, the members of which represent all the agencies providing assistance to this group. The Representative has been invited by DHA to attend the meetings of the task force on internally displaced persons. None has taken place since this invitation was extended. However, DHA has promised close cooperation with the mandate in the monitoring, protection, assistance, prevention and early-warning functions with other partners, including the Centre for Human Rights, UNHCR and other bodies concerned with the problems of internal displacement. In particular, DHA has pledged to apply its experience and capacity to two main aspects of the evolving mandate for the internally displaced: the management of humanitarian assistance through the instrument of the Inter-Agency Standing Committee, and direct work in early warning and prevention of new mass flows of displaced persons.

48. In the context of his work aimed at a better understanding of the general problems faced by internally displaced persons, as requested in paragraph 4 of the above-mentioned resolution, the Representative has contacted a number of academic institutions and non-governmental organizations in order to enlist their contributions in the legal and institutional aspects mentioned above in the programme of activities. In November 1993 he co-chaired a meeting in Washington, D.C. organized by the Refugee Policy Group, with the participation of various other non-governmental organizations active in the area of refugee issues and human rights, many of which had assisted the Representative of the Secretary-General during the first phase of his mandate.

49. The Representative has also been in contact with a joint NGO-UNHCR initiative (known as Partners in Action or PARINAC), and hopes to participate in some of its next meetings and, by doing so, to promote contacts with NGO networks in the various regions of the world. He was also represented in an observer capacity at the annual meeting of the International NGO Working Group on Refugee Women.

50. As requested in paragraph 5 of Commission resolution 1993/95, the Representative has been in contact with a number of Governments, in an effort not only to learn the conditions prevailing on the ground, but also to ensure and demonstrate cooperation in providing protection and assistance to the internally displaced. Due to a number of factors, including the limitation of the human resources at his disposal and the constraints of mutually convenient

arrangements with Governments, the Representative of the Secretary-General has so far been able to visit only one country (Sri Lanka) since the extension of his mandate. The findings of his mission, which took place in November 1993, are described in the country profile contained in the Addendum. The Representative intends to visit four or five countries in Latin America, Africa and Asia before the fifty-first session of the Commission. He has been invited by the Governments of Burundi and Colombia to visit these countries and plans to do so in April and June respectively. He has also initiated consultations with the Government of Rwanda with a view to undertaking a similar in situ visit in the next three months.

51. One of the main concerns of the Representative of the Secretary-General is to establish and maintain a system of follow-up whereby issues discussed and agreed upon in the dialogues with Governments could be monitored. It is clearly counterproductive to have the Representative visit camps or centres for the displaced, hear moving accounts of the needs, intercede with Governments, have reforms undertaken or requests made to the international community and then disappear, not to be heard from by the Governments concerned, far less the affected population. By way of examples, the Representative has tried to follow up with DHA, both in New York and in Geneva, on certain understandings which were reached with the Government of the Sudan concerning possible areas of cooperation; and although this has been constrained by a combination of factors, he still hopes that progress will be possible in this area. The visit to Sri Lanka also resulted in understandings with the authorities which will require follow-up. The issue of follow-up and the means for ensuring it require attention and appropriate action.

52. Apart from the activities outlined above, the Representative of the Secretary-General has maintained close contact with the Secretary-General personally, both to report and to consult on the progress of his work. These contacts have been particularly fruitful with respect to the plans for the future.

C. Future plans

53. It is quite obvious that what is required to ensure adequate protection for internally displaced persons goes beyond what can be achieved through the mandate of the Representative with its current level of staff and material resources. A mandate that would adequately meet the challenges of the crisis of internal displacement would have to be considerably enhanced, both in its objectives and the means for pursuing them. Even with the mandate as now defined, if the Representative is to discharge his obligations in a meaningful and productive manner, support for the mandate will have to be provided at a much more substantial level and on a more stable basis than is currently the case. The collaboration not only of the staff of the Centre for Human Rights, but also of scholars in concerned academic and research institutions and of others who can help provide regional perspectives on the problem and the required approaches would be essential. To be realistic in addressing the crisis of internal displacement, however, it is important to realize that the challenge goes beyond supporting and sustaining the present mandate.

54. These issues were considered in the Representative's most recent consultations with the Secretary-General and the Under-Secretary-General for Humanitarian Affairs, and it was agreed that to remedy the situation a major review should be undertaken to develop the needed comprehensive approach for an effective international protection for internally displaced persons. The review envisaged clearly falls within the framework of the mandate as presently defined by the Commission, and would enormously enhance the conceptual framework and the capacity of the mandate to provide more effective leadership and guidance in this vitally important area.

55. The review will develop along the lines of the operational elements of the mandate as described above and will include: monitoring developments around the world and compiling information on the crisis of displacement as a global phenomenon; identifying and encouraging the growth of national, regional and international capacities to enhance protection for the internally displaced; conducting in-depth studies of several country cases selected from Africa, Asia, Europe and the Americas. It is envisaged that the review would be undertaken by one or more independent research institutions which would act as coordinators, working with the Representative. In carrying out this comprehensive research agenda, the Representative will continue to work closely with DHA, UNHCR, UNDP and other organizations and agencies concerned with the internally displaced. Conferences and discussion groups would be organized in different parts of the world to foster an exchange of views across national, regional and cultural barriers.

56. Because the task is both monumental and interdisciplinary and will require the cooperation of a broad range of independent experts, the coordinators will work together with carefully selected institutions and individuals from all regions of the world to enhance the complementarity of expertise and the comprehensiveness of the coverage.

57. The results of this review would inform the coordinating expert body that would compile and analyse existing international standards, mandates and operations to assess the effectiveness and shortcomings of the international system and what remedies are needed. Finally, all those involved would cooperate in developing normative principles and operational strategies for international action.

58. The Representative of the Secretary-General will report to the Commission on Human Rights on the progress of the study, activities related to the study and the final results. Some of the recommendations of the study may require action by the Secretary-General while others may involve the Commission on Human Rights and other United Nations bodies.

59. It should perhaps be emphasized that what is envisaged is not merely a theoretical study, devoid of practical application. Quite the contrary: the operational functions of the mandate will proceed normally, making use of the research results as they become available. Indeed, through the field survey and the collection of information about the various organizations involved at the country level, the envisaged research is expected to interact with the operational activities; the two would therefore reinforce each other. Thus, research and operations will proceed on both parallel and intersecting tracks that would be mutually beneficial.

60. It is obvious that what is envisaged would require considerable human and material resources to be carried out effectively and fruitfully. If the necessary resources can be made available and the project is implemented productively, there is every reason to expect that it would make a significant contribution to the quest for an effective doctrine of protection for the internally displaced.

IV. CONCLUSIONS

61. It is important to note that the mandate of the Representative calls for a complex, comprehensive and challenging programme of activities, which will require commensurate human and financial resources. From a human resource point of view, only one staff member at the Centre for Human Rights, appointed and reappointed on short-term contracts, has been working on the mandate. While her performance has been outstanding, the needs of the mandate by far surpass what she can humanly do to meet the demands of the mandate. In this connection, it should be acknowledged that the Government of Norway has generously offered to contribute the services of an expert, although the formalities of recruitment have delayed the appointment. In order for the Representative to continue implementing his programme of activities in a meaningful and productive manner, support for his mandate will have to be provided at a much more substantial level and on a more stable basis.

62. In his report to the General Assembly, the Representative of the Secretary-General made the point that it would be tragically ironic if the international community were to become complacent in addressing the crisis of internal displacement because of the existence of his mandate. Despite the Commission's concern, as demonstrated in the establishment of the mandate, and although the need for effective action is indisputable, the normative principles and the enforcement mechanisms for international action are clearly inadequate and ineffective.

63. If the international community is to rise to the challenge, then the mandate of the Representative of the Secretary-General must be seen as a catalyst and a leverage for the adoption of more effective measures. It is in this connection that the envisaged programme of activities can be expected to facilitate the development of a comprehensive strategy of international protection for internally displaced persons. It should, however, not be seen as a new initiative, for all it aims to do is to provide a more credible means of pursuing the objective of the mandate, in particular by facilitating the search for ways to address the crisis of internal displacement in a comprehensive, effective and durable manner.

Notes

1/ Norwegian Refugee Council, The Protection of Internally Displaced Persons by NRC, January 1994.

2/ Refugee Policy Group, Strengthening International Protection for Internally Displaced Persons, December 1993.

3/ See, e.g. UNHCR's Guidelines on the Protection of Refugee Women, July 1991 and the UNDP/UNDRO Training Module on Displaced Persons in Civil Conflict, 1991.